



WP(MD)No.23826 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE G.CHANDRASEKHARAN**

W.P.(MD)No.23826 of 2016
and
W.M.P(MD) No.17168 of 2016

A.Rajangam

... Petitioner

/vs./

1.The Director of Municipal Administration,
Chepauk, Chennai-5.

2.The Commissioner,
Madurai Corporation,
Arignar Anna Maligai,
Madurai District.

3.The Assistant Commissioner (Accounts),
O/o. the Assistant Commissioner Office,
Madurai Corporation,
Arignar Anna Maligai,
Madurai District.

4.The Deputy Director,
Local Fund Audit,
Madurai Corporation Audit,
Arignar Anna Maligai,
Madurai-2.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in his proceedings in No.W1/MaNi13/006643/2012 dated 08.10.2014 and quash the same as illegal and consequentially to direct the respondents to refund the Gratuity of Rs.2,23,479/- with 12% interest within the period that may be stipulated by this Court.

For Petitioner : Mr.A.Nawazkhan
for M/s.Ajmal Associates

For R1 : Mr.D.Gandhiraj,
Special Government Pleader

For R2 : Mr.T.S.Mohamed Mohideen

For R3 and R4 : Mr.Ramachandran

ORDER

This writ petition has been filed challenging the impugned order passed by the third respondent in his proceedings in No.W1/MaNi13/006643/2012 dated 08.10.2014 and quash the same as illegal and consequently, to direct the respondents to refund the Gratuity of Rs.2,23,479/- with 12% interest within the period that may be stipulated by this Court.



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2.The learned counsel for the petitioner submitted that the petitioner was appointed as Motor Attender, on temporary basis, in the year 1969 and his service was regularised with effect from 01.10.1979. He attained the age of superannuation on 30.06.2012. At the time of retirement, he was not paid with any retirement benefits and other monetary benefits. Therefore, he filed a writ petition in WP(MD)No.18543 of 2013. This Court, vide order dated 05.02.2014, directed the second respondent to consider the petitioner's representation dated 24.10.2013 and pass appropriate orders. Subsequently, the third respondent passed the impugned order, directing recovery of a sum of Rs.2,37,947/- from his Gratuity. He was paid only the balance amount of Rs.14,468/-.

3.It is further submitted by the learned counsel for the petitioner that the petitioner's date of birth is 01.07.1951 and he furnished correct date of birth at the time of joining the service. However, the respondents made a wrong entry in the service register with regard to the date of birth of the petitioner as 01.07.1952. The petitioner was allowed to work for one more year and he was paid salary and other benefits. The petitioner was not aware of this and only after the order impugned was passed, he came to know about this mistake. He was no way



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responsible for this mistake and ordering recovery at the time of his retirement, was not right. In support of his submission, he produced the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others Vs Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334**.

4. In response, the learned counsel appearing for the respondents submitted that the petitioner's original date of birth is 01.07.1951. However, he was allowed to retire only on 30.06.2012 instead of 30.06.2011 and he was paid salary for the extra period. Therefore, the recovery was ordered rightly.

5. Considered the rival submissions and perused the records.

6. It is seen from the counter affidavit filed by the second respondent that at the time of entering into the service, the petitioner produced the medical certificate showing his date of birth as 01.07.1951. Therefore, it is clear that the date of birth of the petitioner was wrongly entered as 01.07.1952 by the official concerned. The petitioner was no way responsible for the wrong entry made in the service register and other records and allowing the petitioner to work for one



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more year. It is a mistake committed by the staff, especially. When there is no contributory fact or attributed to the petitioner for this wrong, the order of recovery of pay made against the petitioner for the extra period worked, cannot be justified. It is observed in the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and others Vs Rafiq Masih (White Washer)* reported in *(2015) 4 SCC 334*, as follows:-

18.It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully



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been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

7.It is seen from judgment that recovering from Group C and D service employees, who were due to retire within a year, is not justified and impermissible in law. This judgment squarely applies to the facts of this case. Therefore, this Court sets aside the order of recovery passed by the third respondent in No.W1/MaNi13/006643/2012 dated 08.10.2014 and directs the respondents to refund the gratuity amount Rs.2,23,479/- recovered from the petitioner with 12% interest from the date of recovery till the date of payment. The respondents are also directed to pay such amount within a period of three months from the date of receipt of a copy of this order.



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WEB COPY 8. With the above directions, this Writ Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

23.08.2022

Index : Yes / No
Internet : Yes / No
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To
The Director of Municipal Administration,
Chepauk, Chennai-5.



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G.CHANDRASEKHARAN, J.

cp

Order made in
W.P.(MD)No.23826 of 2016

Dated:
23.08.2022