



W.P(MD)No.26534 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26534 of 2022

I.Rahima

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai-600 009.

2.The Director of Municipal Administration
6th Floor Ezhilagam Annex Building,
Kamarajar Promenade,
PWD Estate, Chepauk,
Triplicane, Chennai-600 108.

3.The Commissioner of Municipality,
Theni Allinagaram Municipality,
Theni, Theni District.

4.The Director, Local Fund Audit,
Kuralagam 4th Floor,
Chennai-600 108.

5.The Regional Director of Municipal Administration,
Madurai.

6.The Assistant Director of Local Fund Audit,
Theni.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent in Na.Ka. No.0282/2011/C1 dated 05.08.2021, quash the same and consequently direct the respondents to refund Rs.64,235/- to the petitioner with interest at the rate of 6 per cent per annum payable from the date of the petitioner's retirement to till the date of disbursement within the time frame that may be fixed by this Court.

For Petitioner : Mr.A.Rahul

For R1, R2 &
R4 to R6 : Mr.A.K.Manikkam
Special Government Pleader

For R3 : Mrs.Hema Karthikeyan

ORDER

Heard the learned counsel on either side.

2. The petitioner was employed as Manager in the third respondent Municipality. Audit wing raised an objection that on account of the omission on the part of the municipal officials, there was interest loss to the tune of Rs.2,56,940/- during the period from 24.04.2007 to 22.06.2011. The petitioner's share was quantified at Rs.64,235/-. The petitioner reached the age of superannuation on 30.06.2011. The petitioner in order to secure safe exit remitted her share. Now, she wants refund of the said amount.



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3. The learned counsel appearing for the third respondent sought time to file counter. However, I am not inclined to grant the same. This is for more than one reason. The petitioner had earlier filed W.P.(MD)No.8738 of 2021 on the very same cause of action and the said writ petition was disposed of on 28.04.2011 in the following terms:-

“6.From the materials available on record, it is seen that while the petitioner was working as Manager in the third respondent Municipality from 20.04.2006 to 11.02.2008, an Audit Objection was raised that the petitioner and three others caused financial loss to the third respondent Municipality. The petitioner was fastened with liability of Rs.64,235/- as security amount to the third respondent towards Audit Objection bearing No.140. According to the petitioner, she was compelled by the third respondent to deposit the said amount so that, she can get her terminal benefits. In view of the compulsion, the petitioner remitted the said amount. Subsequently, by proceedings of the Deputy Director of Local Fund Audit, dated 25.06.2011, Audit Objections were dropped on the ground that there was no financial loss to the third respondent Municipality. On clarification sought for by the third respondent from the Assistant Director of Local Fund Audit for refund of the mount deposited by the petitioner, it has been informed that the third respondent itself can take a decision. The petitioner gave a representation on 18.02.2013 for refund of the amount deposited by her as security. Subsequently, again the petitioner sent a representation on 09.04.2021. Now, the Audit Objection is dropped and the petitioner is entitled to receive the said amount. Since the Audit Objection is dropped, the respondents are directed to refund the amount of Rs. 64,235/- recovered from the petitioner, by considering her representation, dated 09.04.2021 and pass orders on merits and in



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accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.”

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4. Notwithstanding the said direction, the Municipality rejected the petitioner's request for refund vide order dated 05.08.2021. Contending that it amounts to breach of the earlier order passed by this Court, the petitioner filed Contempt Petition (MD)No.1551 of 2022. The said petition was taken up for disposal on 14.11.2022. I closed the contempt petition by giving liberty to the petitioner to question the order dated 05.08.2021. I made it clear that the municipal counsel will have to be ready for final disposal at the admission stage itself. The learned counsel appearing for the petitioner reminded me of the same. I am therefore obliged to take up this writ petition for final disposal right today. It is not as if the third respondent is not having instructions.

5. A mere reading of the materials on record would indicate that audit objection was raised against as many as four persons. The department did not proceed against the other three. The other three also did not remit their share of liability as pointed out by the Audit. That apart, the petitioner in her explanation stated that during the period pointed out by the Audit, she was associated with it only for nine months.



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6. In these circumstances, I hold that the petitioner could not have been selectively targeted. The petitioner would not have paid the said amount on her own volition. Since she would have been threatened with proceedings that she would not be allowed to retire, she in all probability remitted the amount. More than anything else, the audit had subsequently dropped their objections. This is specifically referred to in the earlier order dated 28.04.2021 in W.P.(MD)No. 8738 of 2021.

7. For the reasons set out in Paragraph No.4 of the earlier order, the order impugned in the writ petition is quashed. The petitioner's counsel, on instructions, states that the petitioner would not insist on payment of interest. The third respondent is directed to refund the amount of Rs.64,235/- to the petitioner at the earliest.

8. The writ petition is allowed. No costs.

24.11.2022

Index : Yes / No
Internet : Yes/ No
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To
1.The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai-600 009.



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G.R.SWAMINATHAN, J.

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- 2.The Director of Municipal Administration
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