



W.P.No.2182



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.21821 of 2011

C.Appusamy

...Petitioner

vs.

1.State of Tamil Nadu
rep. by its Director/Commissioner,
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai – 600 009.

2.The Director,
O/o.Local Fund,
Kuralagam, 4th Floor,
Chennai – 600 108.

3.The Commissioner,
Sathyamangalam Municipality,
Sathyamangalam,
Erode District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of 3rd respondent in Na.Ka.No.3592/2009 rp1, dated 12.03.2010 and in the consequential order passed by the 2nd respondent in ep.K. vz; 18679/MPVI/10, dated 23.06.2010 and quash the same and thereby directing the



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respondents to pay the gratuity amount with 18% interest.

For Petitioner : Mr.A.R.Nixon

For Respondents : Mr.S.Ravichandran for R1 & R2
Additional Government Pleader

Mr.R.M.Muthukumar for R3

ORDER

The Writ Petition has been filed challenging the order passed by the third respondent dated 12.03.2010 and the consequential order passed by the second respondent dated 23.06.2010 and to direct the respondents to pay the gratuity amount with 18% interest.

2.Heard Mr.A.R.Nixon, learned counsel appearing for the petitioner, Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents 1 & 2 and Mr.R.M.Muthukumar, learned counsel appearing for the third respondent.

3.The case of the petitioner is that he had rendered an unblemished service of about 33 years as a Pipe Line Fitter at Sathyamangalam Municipality. The petitioner has been granted special grade pay from the year 1996. However, after his superannuation an audit objection seems to have been raised by the



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petitioner's pay had been wrongly fixed in excess to what he is eligible and consequential pay revision pursuant to the subsequent pay commission orders, he had been given excess salary and therefore the third respondent was directed to calculate his correct salary and determine the excess salary paid to the petitioner. Based upon the calculation given by the second respondent, a sum of Rs.99,761/- was ordered to be recovered from the petitioner's Death & Gratuity benefit and only after deducting the said amount, the petitioner had been paid his terminal benefits.

4.Learned counsel for the petitioner would submit that the said exercise had been made by the respondents pursuant to the superannuation of the petitioner on 31.01.2009. He would firstly submit that the pay scale of the petitioner is being worked out by the respondents and had been paid to the petitioner. The special grade pay was granted to the petitioner in the year 1996 and till the date of his superannuation in the year 2009, there was no whisper as to the wrong pay that had been given to the petitioner. Only after the superannuation, an audit objection seems to have been raised by the respondents, upon which the third respondent had recalculated the salary that had been paid to the petitioner and the second respondent had after deducting the alleged excess pay. He would submit that it is trite law that no recovery can be made by the employer after the superannuation of the employee if such



payment had been made by the employer mistakenly.

5. In support of his contention, he would rely upon a judgment of the Hon'ble Apex Court in the case of *State of Punjab and Others vs. Rafiq Masih (White Washer) and others* reported in (2015) 4 SCC 334, and he would pray this Court to set aside the order impugned in this Writ Petition and direct the respondents to refund the amount withheld by them on the alleged excess payment with interest.

6. Countering his arguments, learned Government Pleader appearing for the respondents would submit that the petitioner had been paid excess salary even though he was entitled to pay scale of Rs.4300-100-6000. He had been wrongly fixed the scale pay of Rs.4500-125-7000 and similarly when the 6th pay commission was introduced his salary was refixed on the wrong scale of pay. He would submit that the petitioner cannot be allowed unjustly enrich himself. Therefore, the respondents were right in issuing the impugned order of recovery. He would also rely upon the declaration that had been given to make good the loss caused to Municipality by way of any over payment of pay, pay and allowances or leave salary etc. Therefore, he would submit that the petitioner had himself had given a declaration, the petitioner cannot wriggle out of the same and contend that the order impugned had been wrongly passed.



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7.I have considered the rival submission made by the respective counsel appearing on either side and perused the materials available on record.

8.It is an admitted case that the petitioner had been given special grade pay of Rs.4500-125-7000 in the year 1996 which continued to be paid till 2009 for almost 13 years. The petitioner had superannuated on 31.01.2009 and has been relieved from service. When his terminal benefits had been worked out, an audit objection seems to have been raised as if the petitioner had been paid an excess salary when his pay scale was revised due to his entitlement to special grade pay and such wrong fixation had also being the basis on which his pay was revised based on the 6th pay commission recommendation. Therefore, the petitioner is liable to refund the excess amount paid to him.

9.It is also an admitted case that the petitioner had superannuated in the year 2009. The said recovery had been initiated only in the year 2010. It is to be noted that the petitioner had been paid the special grade pay from the year 1996. It is also eminent that the third respondent Municipality is subject to audit and it is very surprising that none of the audit inspection for 13 years had found such infirmity in the pay scale of the petitioner.



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10.As rightly pointed out by the learned counsel for the petitioner, the ratio laid down by the Hon'ble Apex Court reported in **(2015) 4 SCC 334** is squarely applicable to the facts of the case. For better appreciation, the relevant paragraph is extracted hereunder:

“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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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

(iii) Recovery from the 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 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.”



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From a reading of the aforesaid judgment, the Hon'ble Apex Court has laid down law that there can be no order of recovery of money that had been paid by the employer from a retired employee if such payment had been voluntarily made by the employer.

11. In such view of the matter, the order impugned in the Writ Petition is set aside and the Writ Petition is allowed. The second respondent is directed to disburse a sum of Rs.99,761/- to the petitioner, and the petitioner is entitled for the interest at 12% on the said amount. There shall be no order as to costs.

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Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

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K.KUMARESH BABU, J.

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