IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.8485 of 2023
and W.M.P.No.8682 of 2023

Mrs.M. Unnamalai ... Petitioner

Vs.

1.The District Collector,
Thiruvannamalai,
Thiruvannamalai District.

2.The Assistant Director,
Local Fund Audit Department,
Thiruvannamalai,
Thiruvannamalai District.

3.The Block Development Officer (Panchayat Union),
Thandrampattu,
Thiruvannamalai District.

4.The Accountant General,
Office of Accountant General,
Teynampet, Chennai – 600 018.

*[*R4 impleaded vide order dated 21.04.2023 made in WMP.No.11559 of 2023 in WP.No.8485 of 2023 by PDAJ*]*

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in Na.Ka.Va.E1/771/2021 dated 24.11.2022 and Na.Ka.Va.E1/3139/2022 dated 27.02.2023 and quash the same as illegal and direct the respondents to pay the retirement benefits and the pension due to the petitioner with effect from 01.05.2022, within the time stipulated by this Court.

For Petitioner : M/s.A. Arulmozhi

For Respondents : Mr.S. Rajesh,
Government Advocate [R1 & R2]

Mr.Stalin Abhimanyu,
Additional Government Pleader [R3]

Mr.S. Balaji [R4]

ORDER

The petitioner herein had joined as a Noon Meal Assistant in Thandrampattu Panchayat Union on 01.03.1998. She was permitted to retire on 30.04.2022. When she had sought for disbursement of her retirement benefits, the third respondent through the impugned order dated 24.11.2022, had stated that a sum of Rs.99,284/- was excessively paid to the petitioner and owing to certain Audit Objections in this regard, the retirement benefits can be disbursed to her only after she pays the excess amount of Rs.99,284/-. The impugned order further states that the disbursement of her pension amount would be processed from the month of November 2022.

2. The learned counsel for the petitioner submitted that since the petitioner was permitted to retire from services, recovery of any excess payment made by the respondents, cannot be recovered from a pensioner. In support of such a claim, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334.***

3. Per contra, the learned Government Advocate appearing for the respondents 1 and 2 submitted that the petitioner was born on 01.01.1963 and ought to have reached the age of superannuation on 31.12.2020. However, the second respondent herein had raised certain Audit Objections stating that the petitioner was illegally retained in service till

May 2022 and therefore, the excess salaries paid between January 2021 to April 2022 amounting to Rs.99,284/- requires to be recovered from her. Hence, there is no infirmity in the impugned order.

4. As pointed out by the learned counsel for the petitioner, the Hon'ble Supreme Court in ***White Washer's case*** *(supra)* had held that recovery of any excess payment made, owing to the mistake of the Department, cannot be recovered from a pensioner. The relevant portion of the order reads 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:*
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> *(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 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.***"**

5. In the instant case, though it is claimed that the extension of the superannuation period from 58 to 60 was made applicable to Noon Meal Assistants only through G.O.Ms.No.63 dated 08.10.2021 and the petitioner had reached the age of 58 on 31.12.2020 itself, the respondents had permitted the petitioner to continue in service even after 31.12.2020.

Such extension was not owing to any misrepresentation on the part of the petitioner but only due to the fault on the part of the Department.

6. As held by the Hon'ble Supreme Court in the aforesaid decision, when the respondents have permitted the petitioner to retire with effect from 30.04.2022, such mistake cannot be put against the petitioner. Since the recovery from pensioner is held to be impermissible in law in the aforesaid decision, the present impugned order seeking for recovery of a sum of Rs.99,284/-, cannot be sustained. Consequently, the petitioner would be entitled for disbursement of her retirement benefits, including the pensionary benefits.

7. In the result, the impugned orders dated 24.11.2022 and 27.02.2023 passed by the third respondent, are hereby quashed. Consequently, there shall be a direction to the respondents, to forthwith pass appropriate orders, disbursing the entire retirement benefits, including the pensionary benefits, within a period of four (4) weeks from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

08.06.2023

Speaking order/Non-speaking order
Index:Yes/No
Internet: Yes/No

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To

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Thiruvannamalai,
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M.S.RAMESH,J.

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