



W.P.(MD)No.13225 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.13225 of 2020

and

W.M.P.(MD)No.11071 of 2020

P.Rajalakshmi

... Petitioner

Vs.

1. The Commissioner,
Office of the Commissioner of Madurai Corporation,
Madurai Corporation,
Thallakullam,
Madurai - 625 002.
2. The Assistant Commissioner (General and Administration),
Office of the Assistant Commissioner of Madurai Corporation,
Madurai Corporation,
Thallakullam,
Madurai - 625 002.
3. The Deputy Director of Local Fund Audit,
Office of the Deputy Director of Local Fund Audit,
Madurai Corporation,
Madurai.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Ma.Ni.10/023477/2019, dated 30.01.2020 on the file of the second respondent and the consequential impugned order in Ma.Ni.10/023477/2019, dated 02.07.2020 on the file of the second respondent and quash the same as illegal and consequently, directing the respondents to disburse the pension and all other retirement / death benefits due to the petitioner with interest.

For Petitioner : Mr.T.Aswin Rajasimman

For Respondents : Mr.T.S.Mohammed Mohideen
for R1 and R2
Mrs.K.Christy Theboral
Additional Govt. Pleader for R3

ORDER

This Writ Petition has been filed to call for the records of the impugned order in Ma.Ni.10/023477/2019, dated 30.01.2020 passed by the second respondent and the consequential impugned order in Ma.Ni.10/023477/2019, dated 02.07.2020 passed by the second respondent, quash the same as illegal and consequently, direct the respondents to disburse the pension and all other retirement / death benefits due to the petitioner with interest.



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2. The case of the petitioner is that the petitioner's husband, namely, Paulpandi, was appointed in the post of Male Nurse Assistant in the second respondent office on 18.01.1999 and his services were regularised on 17.01.2000. Thereafter, he was transferred and promoted as Conservancy Inspector vide order dated 02.08.2005. On 24.07.2007, while her husband was working in the post of Conservancy Inspector, he was posted as Vari Thandalar in the second respondent office under the same scale of pay. Under these circumstances, on 24.01.2005, her husband was demoted to the post of Pathivu Ezhuthar from the post of Conservancy Inspector / Vari Thandalar by the third respondent. Though the order of demotion was issued to the post of Pathivu Ezhuthar on 24.01.2015, the pay has not been regulated. Further on 13.07.2016, her husband died due to harness, leaving behind the petitioner, two sons and two daughters. Thereafter, the petitioner has approached the first respondent to release the retirement and pensionary benefits along with all other benefits and the same were denied on the ground that there was an audit objection about the promotion given to her husband. While so, the second respondent passed the impugned order dated 30.01.2020 and consequential impugned order dated 02.07.2020 stating that



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there was pay difference between the post of Conservancy Inspector and Male Nurse Assistant and the excess payment paid to the tune of Rs.2,82,462/- was directed to be recovered. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that admittedly the petitioner's husband entered into service as Male Nurse Assistant in the year 1999 and promoted as Conservancy Inspector in the year 2005 and again he was posted as Vari Thandalar. Subsequently, her husband was demoted as Pathivu Ezhuthar and thereafter, he died in the year 2016. After settling entire terminal benefits in favour of the petitioner and the petitioner was also receiving the family pension, at this stage, the present impugned orders were passed to recover the excess amount, which is not sustainable. He further submitted that the issue that arises in the present Writ Petition is no longer *res integra* and the same was decided by the Hon'ble Apex Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer)*** reported in ***2015 (4) SCC 334***.



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4. The learned counsel appearing for the respondents 1 and 2 would submit the petitioner's husband has sent a consent letter dated 07.01.2015 to the Commissioner, Madurai Corporation stating that he is ready to repay the excess salary if there is any recovery during his service period. Since the deceased employee himself has admitted to recover the excess salary, the petitioner has no *locus standi* to raise objection for the said recovery. Hence, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner's husband entered into service as Male Nurse Assistant in the year 1999 and promoted as Conservancy Inspector in the year 2005 and again he was posted as Vari Thandalar. Thereafter, her husband was demoted as Pathivu Ezhuthar and his pay was refixed and recovery was ordered. Subsequently, he died in the year 2016 and the entire terminal benefits were settled in favour of the petitioner. Thereafter, the present impugned orders



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were passed to recover the excess amount. As per the decision of the Hon'ble Apex Court (*supra*), recovery of excess payment from the employees would be impermissible in law. In this regard, it is relevant to refer to the decision of the Hon'ble Apex Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer)*** reported in **2015 (4) SCC 334**, which reads as under:

".....12. 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



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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."

7. Considering the above submissions and taking into consideration the ratio laid down by the Hon'ble Apex Court in the case of ***White Washer (supra)*** and the fact that the recovery of excess payment from the employees would be impermissible in law, this Court is inclined to set aside the impugned orders dated 30.01.2020 and 02.07.2020.

8. Accordingly, this Writ Petition is allowed and the impugned orders dated 30.01.2020 and 02.07.2020 are set aside. The respondents are



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directed to pay the balance terminal benefits without recovering any amount from the petitioner within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

06.02.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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