



W.P.(MD)No.1407 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:03.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.1407 of 2018

V.Sankaralingam

... Petitioner

Vs.

1.The Principal Secretary to Government,
Municipal Administration & Water Supply,
Secretariat,
Fort St. George,
Chennai – 600 009.

2.The Director of Municipal Administration,
Ezhilagam,
Chepauk,
Chennai – 600 005.

3.The Commissioner,
Madurai Corporation,
Madurai.

4.The Deputy Director,
Local Fund Audit,
Madurai Corporation,
Madurai.

5.The Assistant Commissioner(Personnel),
Madurai Corporation, Madurai.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the fifth respondent in Ma.Ni.15/001952/2017 dated 20.11.2017 and quash the same and further direct the respondents to pay a sum of Rs.1,10,760/- which was detected from petitioner's gratuity and further direct the respondents to re-fix the petitioner's pension on the basis of 5200-20200 GP 2400 pay scale within the time frame that may be stipulated by this Court.

For Petitioner	: Mr.S.Mandhiralingeswaran
For RR-1, 2, 4 & 5	: Mr.G.V.Vairam Santhosh, Additional Government Pleader
For R-3	: Mr.T.S.Mohammed Mohideen

ORDER

This writ petition has been filed to quash the impugned proceedings of the fifth respondent in Ma.Ni.15/001952/2017, dated 20.11.2017 and to further, direct the respondents to pay a sum of Rs.1,10,760/- which was detected from petitioner's gratuity and further direct the respondents to re-fix the petitioner's pension in the pay scale of 5200-20200 GP 2400 within a stipulated period.



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2. The case of the petitioner is that the petitioner worked as a Road Mazthoor(unskilled worker) in the third respondent Corporation. Initially, he was appointed on 01.10.1979. Subsequently, he was given Selection Grade on 01.10.1979 and Special Grade was given on 07.08.2002. Thereafter, on attaining the age of superannuation, he retired from service on 30.06.2016. While the matter stood thus, the Government of Tamil Nadu issued G.O.Ms.No.666 Finance(Pay Commission) Department, dated 27.06.1999, to revise the pay scale to all Government servants in all categories. Pursuant to the same, the petitioner's pay was also revised. However, at the time of retirement, without enquiry, a sum of Rs.1,10,760/- was deducted from his gratuity stating that the petitioner was receiving higher salary. Aggrieved by the same, the petitioner has filed a writ petition in W.P(MD)No.17382 of 2017, seeking to re-fix the pension and also pay the sum of Rs.1,10,760, which was deducted from the petitioner's gratuity, in which, this Court has directed the respondents to consider the representation of the petitioner and pass orders. Pursuant to the said order, the fifth respondent



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has passed the impugned order rejecting the request of the petitioner. Challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that the issue arises in this writ petition is no longer *res integra* in the light of the decision in ***State of Punjab vs. Rafiq Masih(white Washer's case)*** reported in **2015(4) SCC 334**. He would further submit that the petitioner did not avail the benefit by playing fraud or miscellaneous and the respondents on their own paid the salary, which cannot be recovered.

4. The learned Standing Counsel appearing for the third respondent, would submit that the petitioner's pay was rightly fixed as Rs.5200-20000+1800 based on the sixth pay Commission, as per G.O.M.sNo.234 dated 01.06.2009. As per the petitioner's request to fix his salary based on the One Man Commission, as per G.O.Ms.No.338 dated 26.08.2010, the pay was revised. However, G.O.Ms.No.338, is applicable for Trade Post, which requires I.T.I. Certificate. But, the



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petitioner is working in the Non-Trade Post as unskilled worker. Subsequently, as per Government letter No.45529/F3/2010, the Corporation introduced to rectify and revise the wrong fixation of pay made under One Man Commission as per G.O.Ms.No.338, dated 26.08.2010. Following the same, the excess amount paid to the petitioner was deducted from the gratuity amount due to the petitioner. Further, the petitioner had agreed and signed for making recovery and hence, the petitioner cannot claim return of the amount recovered from him and therefore, there is no irregularity or illegality in the order passed by the fifth respondent and hence, prayed for dismissal of this writ petition.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. Admittedly, the petitioner is a Class IV employee. He did not avail the benefit by fraud or misrepresentation. The respondents on their own paid the amount. However, at the time of retirement the said amount



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was withheld from the gratuity amount and the same is not sustainable.

The issue raised in this case, is squarely covered by the ratio laid down in

State of Punjab vs. Rafiq Masih(white Washer's case)(cited supra).

Relevant portion of the said decision is extracted hereunder:

“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 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



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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. Applying the ratio laid down by the Hon'ble Apex Court in the above cited decision, this Writ Petition is allowed and the impugned order of the fifth respondent, dated 20.11.2017, is hereby set aside. The third respondent Corporation is directed to refund the withheld amount of Rs.1,10,760/- without any interest to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No Costs.

03.02.2023

pm

NCC:Yes/No

Index:Yes/No



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M.DHANDAPANI, J.

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