



W.P.(MD)No.28079 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.28079 of 2022

and

W.M.P(MD) Nos.22163 & 22164 of 2022

Annammal

: Petitioner

Vs.

- 1.The Assistant Director
Fisheries and Fishermen Welfare Department,
Kanyakumari - 629 702.
- 2.The Principal Accountant General (A and E),
No.361, Anna Salai,
Chennai - 600 018.
- 3.The District Treasury Officer
Nagercoil,
Kanyakumari District.

: Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings issued by the 1st respondent in Na.Ka.No.632/E/2020 dated 11.11.2022 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the respondents to disburse the entire monetary benefits to the petitioner.

For Petitioner : Mr.P.Krishnasamy

For Respondents : Mrs.K.Christy Theboral, - for R1 & R3
Additional Government Pleader
Mr.P.Gunasekaran - for R2
Standing Counsel

ORDER

This writ petition has been filed to quash the impugned proceedings issued by the 1st respondent in Na.Ka.No.632/E/2020 dated 11.11.2022 and consequently to direct the respondents to disburse the entire monetary benefits to the petitioner.



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2. The learned counsel for the petitioner submitted that the petitioner is a widow and after the death of her husband on 14.04.1995, she was appointed as a Sweeper on 06.12.2000 under Compassionate appointment in Fisheries and Fishermen Welfare Department. The petitioner belongs to Scheduled Caste community. Further, the petitioner retired from service on 31.07.2022, after completion of 21 years 7 months service, without any allegations. The petitioner has received the last drawn salary at Rs.33,100/- and that the scale of pay is Rs.4800-10000 + GP 1300 (Level 1). However, the first respondent vide proceedings, dated 11.11.2022 decided to recover the amount to the tune of Rs.5,25,424/- on the ground that the pay was wrongly fixed by the employer by adding the grade pay twice to the petitioner, thereby based on the audit objections, the recovery order was passed. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner further submitted that admittedly the petitioner is a last grade servant worked as a Sweeper after



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the demise of her husband in the respondents department. The petitioner did not made any misrepresentation for acquiring the higher pay, however, the petitioner is an illiterate and the employer on their own, paid the amount as per the Government Orders and thereby, the petitioner received the said amount from the employer. At the time of retirement, they sought to be recovered the amount, is not sustainable one and it is in clear violation of principles of natural justice and further in respect of last grade servant already Apex Court held that if there is any misrepresentation on the part of the employee, the amount cannot be recovered in respect of last grade servant. Accordingly, he prayed for allowing the writ petition.

4. To support the contention of the petitioner, he referred to the decision of the Hon'ble Supreme Court rendered in the case of **State of Punjab and others Vs. Rafik Masih (White Washer) and others** reported in **2015(4) SCC-334**.

5. By referring to the judgment of the Hon'ble Supreme Court of India, the petitioner submitted that no recovery proceedings can be initiated



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even for any excess payment paid to the petitioner by the respondents.

Hence, the Recovery proceedings, initiated by the respondents are liable to be quashed.

6. The learned Additional Government Pleader appearing for the respondents 1 and 3 submitted that the service register was sent to the second respondent with the proposal of retirement benefits, dated 19.10.2022 and it was returned to the office on 17.11.2022. The draft recovery calculation details were communicated to the petitioner by the second respondent on 09.09.2022 which is not objected to by the petitioner. Thereafter, the second respondent reiterated the same calculation to the respondent as well as to the petitioner. Thereafter, the third respondent has also communicated the recoverable excess payment vide letter, dated 19.12.2022. Moreover, the third respondent deducted the excess payment of Rs.3,87,060/- and remitted the balance payment of Rs.60,936/- and GPF Amount of Rs.55,747/- in the bank account of the petitioner. Hence, the petitioner consciously accepted for the recovery of arrears and received the balance amount through her account. The second respondent passed the



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final order on 09.11.2022 and it was communicated to the petitioner also which is remains unchallenged and become final. Hence, she prayed for dismissal of the writ petition.

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

8. The facts in the present case are not in dispute. Admittedly the petitioner retired from service and at the time of retirement the present recovery order is passed, without issuing any notice. It is an undisputed fact that the petitioner is a last Grade servant and the issue arises in the present case is squarely covered by the decision of the Hon'ble Apex Court, wherein, the Apex Court held that in the absence of any misrepresentation, if any benefits granted to the clause 3 and 4 employees, cannot be sought to be recovered subsequently, at a later point of time.

9. In the decision of the Hon'ble Supreme Court rendered in the case of **State of Punjab and others Vs. Rafik Masih (White Washer) and**



others reported in **2015(4) SCC-334** and referred paragraph No.12, wherein, it was held as follows :

"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.



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(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."

In view of the settled proposition of law laid down by the Hon'ble Apex Court, the Recovery proceedings, initiated by the respondents is not sustainable, and accordingly, the present impugned order is quashed.

10. Accordingly, this writ petition is allowed. The present impugned order is set aside. The respondents are directed to disburse the



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terminal benefits to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM

To

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M.DHANDAPANI, J.

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