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W.P.No.5291 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.5291 of 2020
and W.M.P.Nos.6238 and 6240 of 2020

C.Kasiammal

... Petitioner

-Vs-

1. Commissioner of Municipal Administration,
Chepauk, Chennai 600005.

2. Director,
Local Fund Audit,
Integrated Complex for Finance Department,
4th Floor,
Nandanam, Saidapet, Chennai 600035.

3. The Commissioner,
Panruti Municipality,
Panruti,
Cuddalore District 607106.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent pertaining to the issuance of Proceedings in Na.Ka.No. 665/2015/ H1 dated 24.06.2015 and quash the same and consequently direct the third respondent to refund the payment of Rs.1,13,763/- recovered from the DCRG of the Petitioners' Husband Late. Chakkarapani.



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For Petitioner : Mr.M.Vijayamehanath
For R1 and R2 : Dr.T.Seenivasan
Special Government Pleader
For R3 : Mr.V.Jayaprakash Narayanan

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 24.06.2015, thereby ordered to recover a sum of Rs.63,763/- from the petitioner's husband retirement benefits.

2. Heard both sides and perused the materials available on record.

3. The petitioner's husband was appointed in the third respondent Municipality in the post of Sweeper and his service was subsequently regularized in the said post. While being so, he met with an accident and died on 14.05.2013. However, his terminal benefits were not settled even after a period of two years from the date of his demise. Therefore, the petitioner, being the wife submitted a representation seeking settlement of retirement benefits. On the representation, the third respondent passed an order to recover a sum of Rs.63,763/- from the death benefits of her husband, on the ground that the petitioner's husband was paid excess amount. Further, though the order of recovery stated as Rs.63,763/-, a perusal of service records revealed that a sum



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of Rs.1,13,763/- was deducted out of Rs.1,22,012/- and the petitioner was paid only a sum of Rs.8,249/-.

4. Admittedly, the petitioner's husband was not paid on any misrepresentation or any fraud. That apart, it was paid long before and only on the representation submitted by the petitioner seeking terminal benefits, the order of recovery was passed by the third respondent.

5. In the case of ***State of Punjab and ors Vs. Rafiq Masih (White Washer) and ors.***, reported in ***(2015) 4 SCC 344***, the Hon'ble Supreme Court of India held that in few situations, the recovery from the employees would be impermissible in law as follows:-

(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. 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.

(iii) 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.

(iv) 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



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would far outweigh the equitable balance of the employer's right to recover.”

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6. The petitioner's husband is coming under clause IV category. Further, the excess payment is also ordered to recover after a period of five years from the date of payment. Therefore, the impugned order cannot be sustained and is liable to be quashed. Accordingly, the impugned order passed by the third respondent in Na.Ka.No. 665/2015/ H1 dated 24.06.2015, is hereby quashed.

7. Insofar as the excess amount is concerned, the petitioner's husband obtained loan and the balance amount has been deducted along with excess pay of Rs.63,763/-. Therefore, the petitioner is entitled for terminal benefits of Rs.63,763/- alone, since the remaining amount was adjusted towards the loan availed by the petitioner's husband. Therefore, the third respondent shall disburse a sum of Rs.63,763/- with interest at the rate of 6% p.a, within a period of four weeks from the date of receipt of a copy of this order.

8. Accordingly, this writ petition stands allowed. Consequently, connected Miscellaneous petitions are closed. No costs.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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