



W.P.No.4719/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.4719 of 2020

S.Gnanashanthi

... Petitioner

/vs/

1. The District Adi-Dravidar and
Tribal Welfare Officer,
Collectorate, Cuddalore District.
2. The Special Tahsildar (Adi Dravidar Welfare),
Vridhachalam,
Cuddalore District.
3. The Head Master,
Government Adi-Dravidar Welfare Middle School,
N.Nariyur, Veppur Taluk,
Cuddalore District.
4. The Accountant General (A & E),
Teynampet, Chennai – 18.

... Respondents

Writ Petitions are filed under Article 226 of the Constitution of India
to issue a writ of mandamus directing the first respondent to consider and



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pass orders on the representation dated 19.12.2019 requesting for refund the recovered D.C.R.G. Amount of Rs.2,27,164/- and in the light of the direction issued by the Hon'ble Apex Court 2015 (4) SCC 334 and in the light of the orders of this Court passed in W.P.No.3551 of 2018 dated 07.02.2019.

For Petitioner ... No appearance

For Respondents ... Mr.S.Arumugam
Government Advocate for R1 to R4

ORDER

There is no representation for the petitioner. Heard Mr.S.Arumugam, the learned Government Advocate for the respondents.

2. This writ petition has been filed by the wife of the deceased Government employee K.Sathiyathan seeking writ of mandamus to direct the first respondent to consider the representation dated 19.12.2019 in the light of the direction issued by the Hon'ble Apex Court 2015 (4) SCC 334 and in the light of the orders of this Court passed in W.P.No.3551 of 2018 dated 07.02.2019.



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3. The petitioner's husband by name K.Sathiyathan worked as B.T.Assistant(Warden) at Government High School (Adi-Dravidar Welfare), Devalur. The petitioner's husband has suffered an order to cancel the incentive increment granted to him and consequential recovery of a sum of Rs.2,27,165/-. The said amount has been recovered from DCRG payable to the petitioner's husband. Since the same has been done subsequent to his retirement on 05.06.2018, the petitioner's husband gave several representation and later he died.

4. Mr.S.Arumugam, the learned Government Advocate, submitted that the amount has been recovered as it was found as an excess payment made to the petitioner's husband; however the said recovery has been made only subsequently to the retirement of the petitioner's husband; even while the petitioner's husband was alive he was challenging the above recovery by stating that it is impermissible in law.

5. No recovery can be made against the petitioner's husband in view



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of the bar contemplated under the categories given in the Judgment of the

Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Mashi (White Washer) and others reported in (2015) 4 SCC 334***. The relevant paragraph of the said judgment is extracted hereunder:

“18. It is not possible to postulate all situation 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 the employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”



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6. The petitioner's case would fall under Clause (ii) of the above category in view of the fact that recovery has been ordered subsequent to the retirement of the petitioner's husband which is not permissible. Hence, I feel the respondents should be directed to pass orders to refund the recovery made from the terminal benefits of the petitioner's husband.

7. Accordingly, this Writ Petition is allowed and the first respondent is directed to consider the representation dated 19.12.2019, in the light of the direction issued by the Hon'ble Apex Court in ***State of Punjab Vs. Rafiq Mashi (White Washer) and others reported in (2015) 4 SCC 334*** and pass orders with regard to refund the recovery made from the terminal benefits of the petitioner's husband, within a period of four weeks from the date of receipt of a copy of the order. No costs.

26.02.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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R.N.MANJULA ,J.

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To:

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