



W.P.(MD).No.5878 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.5878 of 2021

and

W.M.P.(MD)No.4611 of 2021

K.Murugan

...Petitioner

Vs.

1.The Commissioner,
Municipal Administration,
10th Floor, Raja Annamalaipuram,
Chennai-28.

2.The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli-1.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records connected with the Impugned Order passed by the 2nd respondent in Na.Ka.No:C1/5851/2020 dated 02.02.2021 and also the consequential order of the 2nd respondent in Na.Ka.No.C1/5851/2020 dated 26.02.2021 and quash the same in so far as recovery of Rs.76,910/- (Seventy Six Thousand Nine Hundred and Ten only) from the retiral benefits of the petitioner.



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For Petitioner : Mr.S.Govindan
For R-1 : Mr.J.John Rajadurai,
Government Advocate
For R-2 : Mr.M.Sivanu Pandian,
Standing Counsel

ORDER

The present writ petition has been filed to call for the records connected with the Impugned Order passed by the 2nd respondent in Na.Ka.No:C1/5851/2020 dated 02.02.2021 and also the consequential order of the 2nd respondent in Na.Ka.No.C1/5851/2020 dated 26.02.2021 and quash the same in so far as recovery of Rs.76,910/- (Seventy Six Thousand Nine Hundred and Ten only) from the retiral benefits of the petitioner.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

2.1. The writ petitioner was appointed as Fitter in the Tamil Nadu Water Supply and Drainage Board as sponsored by Employment Exchange in the



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sanctioned post on full-time basis and subsequently was absorbed on 01.06.1992 as Fitter along with 10 other similarly placed persons from the TWAD Board to the Melapalayam Municipality with continuity of service. Thus, he became the staff member of the respondent corporation with effect from 01.06.1992. After the formation of Tirunelveli corporation in 1996, proposals for regularization of service of those absorbed employees from TWAD Board including the writ petitioner were forwarded. Even though the petitioner was appointed as Fitter in the sanctioned post in the TWAD board on 05.10.1988 and absorbed as Fitter in the Melapalayam Municipality with effect from 01.06.1992 and continued to work till 28.02.2021 as Fitter, though he was designated as Fitter, he was paid the salary of unskilled worker, as such he was getting a reduced salary forgetting the fact that he was working as a Fitter in a sanctioned post. Hence, the petitioner filed writ petitions in W.P.(MD)No.5737 of 2015 and W.P.(MD)No. 111 of 2021 and the same are pending before this Court.

2.2. While the petitioner was in his verge of retirement on 28.02.2021 without any notice and without giving any opportunity of being heard, the



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second respondent issued a letter dated 02.02.2021 with respect to the proposed recovery of Rs.76,910/- (Seventy Six Thousand Nine Hundred and Ten only) based on the audit report for the years 2013-2014 and 2018-2019 without marking a copy to him. Thus, the second respondent had passed orders of retirement, by order dated 26.02.2021 retiring him from service with effect from 28.02.2021 subject to the condition of recovery of Rs.76,910/- (Seventy Six Thousand Nine Hundred and Ten only) from his terminal benefits without assigning any notice and without giving him an opportunity of hearing. Hence, challenging the impugned order passed by the 2nd respondent in proceeding Na.Ka.No:C1/5851/2020 dated 02.02.2021 and consequential order of the 2nd respondent in Na.Ka.No.C1/5851/2020 dated 26.02.2021 and seeking to quash the same in so far as recovery of Rs.76,910/- (Seventy Six Thousand Nine Hundred and Ten only) has been ordered to be recovered from his retiral benefits, this writ petition came to be filed.

3. Heard the learned counsel for the petitioner Mr.S.Govindan, the learned Government Advocate for the 1st respondent, Mr. J.John Rajadurai and the learned Standing Counsel for the 2nd respondent, Mr. M.Sivanu Pandian and



carefully perused the materials available on record.

4. A careful perusal of the materials available on record would reveal that the impugned orders came to be passed only on 02.02.2021 and 26.02.2021 respectively at the verge of the petitioner's retirement on 28.02.2021. That apart, the recovery of Rs.76,910/- (Seventy Six Thousand Nine Hundred and Ten only) which was sought to be made, came to be issued without any notice after a lapse of seven years from the alleged audit report for the years 2013-14. In addition to that it is pertinent to note that the same came to be passed without putting the petitioner on notice and without giving him an opportunity of hearing. The issue as to passing orders of recovery at the verge of retirement as far as B and C class posts are concerned is no more res integra and this Court has dealt with the same in several cases.

5. The Honorable Supreme Court in the case of ***Thomas Daniel .vs. State of Kerala in Civil Appeal No.7115 of 2010, dated 02.05.2022*** has dealt with a similar case and the relevant portion of the same is extracted as follows:



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(13) In *State of Punjab and Others v. Rafiq Masih (White Washer) and Others* wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.



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18. *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 hereinabove, 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. Coming to the facts of the present case, it is to be considered that the recovery order as against the petitioner has been passed at the verge of his retirement who is due to retire within one year from the date of order of recovery. That apart, he belonged to Class IV service, that is, Group D service.

7. Fully fortified by the law lay down by the Honorable Supreme Court in the judgment extracted supra, I am of the considered view that an attempt to recover an amount of Rs.76,910/- (Seventy Six Thousand Nine Hundred and Ten only) from the retiral benefits of the petitioner after a passage of seven years from the date of the alleged audit objection is unjustified. That apart, having passed the order of recovery without putting the petitioner on notice and without giving him an opportunity of hearing, this is a sheer case of violation of principles of natural justice.



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8. In the result, the writ petition succeeds and accordingly the impugned orders are quashed. Hence, this writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

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L.VICTORIA GOWRI, J.

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