



W.P.(MD).No.4648 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.4648 of 2023

Pilliammal

... 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.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd
respondent in Ma.Ni.15/001952/2017 dated 20.11.2017 and quash the same



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and further direct the respondents to pay a sum of Rs.1,05,689/- which was deducted from the Gratuity of the petitioner's husband and further direct the respondents to re-fix his 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.A.Robinson
For Respondent Nos.1 & 2	: Mr.N.Satheesh Kumar Additional Government Pleader
For Respondent No.3	: Mr.K.K.Kannan Standing Counsel

ORDER

The instant writ petition has been filed by the wife of a retired unskilled employee of the respondent corporation, challenging the order passed by the 3rd respondent herein on 20.11.2017, wherein the request of the petitioner for refund of Rs.1,05,689/- has been rejected.



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2. The petitioner's husband was working as an unskilled employee in the respondent Municipal Corporation. The Commissioner of Municipal Administration by his proceedings dated 01.10.2012, had informed the Corporation Commissioner, to enhance the grade pay of unskilled workers from Rs.1800/- to Rs.2400/- with effect from 01.01.2006 and monetary benefits from 01.08.2010. Based upon the above said communication, the petitioner's husband was receiving monetary benefits. However, by way of another communication dated 21.05.2015, the Director of Municipal Administration has clarified that the enhancement of grade pay is applicable only to the technical staff and not to the unskilled employees. The petitioner had attained superannuation on 30.06.2015 and passed away on 30.12.2017.

3. While disbursing the terminal benefits, a sum of Rs.1,05,689/- was retained by the Municipal Corporation on the ground that erroneously enhanced grade pay was granted to the deceased employee. After the death of the employee, the writ petitioner has given a representation, seeking to refund the said amount. Since, the said request was not considered. The petitioner has filed W.P.(MD).No.17383 of 2017 for refund of the said amount. This Court passed by an order dated 15.09.2017, had directed the authorities of



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Municipal Corporation to consider the representation of the employee and pass orders on merits. Pursuant to the orders of this Court, the present impugned order has been passed on 20.11.2017, to the effect that since erroneously higher grade pay has been paid, the question of refunding the deducted amount of Rs.1,05,689/- does not arise. This order is under challenge in the present writ petition.

4. The learned Counsel appearing for the writ petitioner herein had contended that the enhanced grade pay was paid to the writ petitioner based upon the G.O.Ms.No.338, Finance (Pay Cell) Department dated 26.08.2010. Therefore, the monetary benefits granted to the writ petitioner under the above said government order cannot be taken away by way of executing instruction issued by the Director of Municipal Administration. He further contended that the petitioner's husband being an unskilled employee and belonged to category-D, the question of recovery would cause great hardship to the family.



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5. Per contra, the learned Standing Counsel appearing for the third respondent had contended that since the said Government Order is not applicable to the petitioner's husband, the question of refunding the said amount would not arise.

6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. A perusal of the proceedings of the Commissioner of Municipal Administration dated 01.10.2012 and the annexure clearly reveal that an unskilled employee is entitled to receive grade pay of Rs.2400/-. However, by way of another communication dated 21.05.2015, some clarification has been issued withdrawing the said benefits. Therefore, it is clear that there is no mistake on the part of the writ petitioner in receiving the said benefits. In such circumstances, the question of recovery would not arise.

8. The Hon'ble Supreme Court of India in a judgement reported in **2014(8) SCC Page No.883** has held that the recovery orders could not be issued after a period of five years, especially when the employee belongs to



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Grade 'C' or 'D' category. In the present case, the petitioner's husband had attained superannuation and the order of recovery has been effected by retaining a sum of Rs.1,05,689/- from Death cum Retirement Gratuity (DCRG) alone.

9. In view of the above said facts, the impugned order in this writ petition is set aside. The respondents are directed to refund a sum of Rs.1,05,689/- and re-fix the pension. The said exercise shall be completed within a period of 12 weeks from the date of receipt of copy of this order.

10. With the above said observations, this writ petition stands allowed.

No costs.

05.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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R.VIJAYAKUMAR,J.

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