



W.P.(MD)No.11897 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.11897 of 2024 &
W.M.P.(MD)No.10601 of 2024

J.Roja

P.A. to District Collector (NMP) (Retired),
Ramanathapuram District,
Ramanathapuram.

... Petitioner

vs.

The District Collector,
Ramanathapuram District,
Ramanathapuram

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondent dated 03.04.2024 in Na.Ka.Q2/26844/2023 and quash the same and consequently direct the respondent to pay the petitioner the pension arrears of retirement benefits and other applicable monetary benefits along with interest within the period that may be stipulated by this Court.

For Petitioner : Mr.E.Ilango

For Respondent : Mr.M.Lingadurai
Special Government Pleader



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ORDER

Heard Mr.E.Ilango, learned counsel appearing for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader for respondent.

2. The petitioner has filed this writ petition seeking a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondent dated 03.04.2024 in Na.Ka.Q2/26844/2023, quash the same and consequently direct the respondent to pay her the pension arrears of retirement benefits and other applicable monetary benefits along with interest within a stipulated time.

3. The petitioner has been given with the impugned order for recovery of a sum of Rs.3,16,405/- out of Rs.4,52,007/- towards illegal construction put up on a water body without proper verification.

4. Mr.E.Ilango, learned counsel appearing for the petitioner submitted that the impugned order has been passed unmindful of the earlier



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order passed in W.P.(MD)No.7837 of 2024, wherein, by order dated 28.03.2024, this Court directed the respondent therein to consider the representation of the petitioner dated 09.02.2024 and pass appropriate orders. It is his submission that though such an order has been passed, so far, No Due Certificate has not been issued by the respondent.

5. Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondent submitted that the site in which the office building was constructed is found to be a water body and a private party has filed a writ petition before this Court in W.P.(MD)No.10406 of 2015 to remove the computer service room under construction there, wherein, by order dated 18.07.2023, the following order has been passed by this Court.

"4. We direct the respondents to maintain the water body free of any encroachment hereafter. At the same time, the issue cannot be left at that. It is not known as to how the water body was chosen as a place for putting up the construction. We direct the respondents to identify the officers / government



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employees responsible for choosing the site. Since substantial sum of money has been incurred for putting up the construction, the said amount shall also be recovered from them. While doing so, the respondents will adhere to due process of law. In other words, proper notice shall be served on the employees concerned before passing the final order.

5. The Writ Petition is allowed on these terms. No costs."

6. This impugned order for recovery has been made against the petitioner in view of the fact that the petitioner was working as a Block Development Officer at the relevant point of time. Even though the cost of the construction has been allowed to be recovered from the officials in-charge for wrongly choosing the site, such exercise cannot be done without giving notice to the petitioner and giving her an opportunity to make her submissions.

7. The learned counsel appearing for the petitioner submitted that the recovery procedure ought to have been done after the payment of pension is ordered to the petitioner and after resorting to pension release.



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8. It is to be noted that the order of the Court is to recover the construction cost from the officials who are responsible for the wrong to be committed. So, the petitioner cannot choose to say how to recover the amount or when the recovery is to be made. It is up to the recovery authority if at all the determination of the amount against the petitioner is proved to be correct. However, since the petitioner has not been given with any notice before arriving at a conclusion that the petitioner is liable to pay a quantified sum of Rs.3,16,405/-, I feel that notice ought to be issued to the petitioner.

9. The learned Special Government Advocate fairly conceded that the impugned order shall be treated as show cause notice.

10. In view of the same, the writ petition is **disposed of** and the impugned order dated 03.04.2024 passed by the respondent is to be treated as show cause notice and the petitioner is at liberty to make her submissions as to how the determination of the amount is not correct or as to how she is not the person in-charge for the construction made in the



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water body within a period of two weeks from the date of receipt of a copy of this order. On receipt of such explanation, the respondent shall consider the same and pass orders afresh if it deems to be necessary within a period of four weeks thereon. No costs. Consequently, connected Miscellaneous Petition is closed.

07.06.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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To

The District Collector,
Ramanathapuram District,
Ramanathapuram



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R.N.MANJULA, J.

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