



W.P.(MD).No.14308 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.14308 of 2024

and

W.M.P.(MD)No.12561 of 2024

M.Arokiya Tamil Selvi

Vs

...Petitioner

1.The Superintending Engineer (P&A),
Mettur Thermal Power Station-2,
Mettur Dam-6,
Salem District.

2.The Superintending Engineer (P&A),
Thoothukudi Thermal Power Station,
Thoothukudi – 4,
Thoothukudi District.

3.The Administrative Supervisor,
Mettur Thermal Power Station-2,
Mettur Dam-6,
Salem District.

4.The Assistant Accounts Officer,
Mettur Thermal Power Station-2,
Mettur Dam-6,
Salem District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Ku.No. 007517/561/Mu.Ni.A/Ni.Pi-1/Vu.2/2024 dated 14.05.2024 on the file of the second respondent and the consequential impugned order in Letter No.2524/232/MePo/Ko(Ma)Ni/MuNi.A/NiPi1/Vu3/Ko.Thani/2024 dated 28.05.2024 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.T.Aswin Raja Simman

For Respondents : Mr.S.Arivalagan
Standing Counsel

ORDER

Heard Mr.T.Aswin Raja Simman, learned counsel for the petitioner and Mr.S.Arivalagan, learned Standing Counsel for the respondents.

2. By consent of both the parties, this Writ Petition is taken up for final disposal at the admission stage itself.

3. The petitioner, who is the wife of the deceased viz., S.Madhesh, who was working as Junior Engineer at Thoothukudi Thermal Power



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Station and died on 08.12.2020 while in harness, has filed this Writ Petition seeking to quash the recovery order dated 14.05.2024 and the consequential order dated 28.05.2024.

4. The petitioner who had been given with the order of recovery for the amount of Rs.71,909/- being allowed to her husband medical leave for which he is not eligible. In the impugned order dated 14.05.2024, it has been stated that during the audit it was found that the petitioner's husband S.Madhesh had availed more than 540 days of medical leave. The maximum leave available under earned medical leave is 540 days. The audit had found out that the petitioner had availed 558 days (i.e) 18 days in excess of the maximum. Hence, the period between 20.10.2009 to 12.11.2009 was considered as extraordinary medical leave without pay and the proceedings have been issued on 14.05.2024 for recovery of the pay paid to the said period and consequently recovery intimation has been given on 28.05.2024.

5. Mr.T.Aswin Raja Simman, learned counsel for the petitioner submitted that there is no suppression of material facts by the petitioner's husband and he was not instrumental in getting the excess pay of



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Rs.71,909/-. In fact, the leave period relates to the year 2009, and in respect of which, proceedings have been issued after 15 years. The petitioner's husband belonged to Group C employee and he also died on 08.12.2020 and the recovery intimation has been without issuing any show cause notice, without considering the poor economical condition of the petitioner.

6. Mr.S.Arivalagan, learned Standing Counsel for the respondents submitted that the petitioner's son has been given with the compassionate appointment and hence, the poverty cannot be the reasons for withholding the recovery.

7. So far as the recovery is concerned, the legal position had already been settled by the Hon'ble Supreme Court of India in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696***. In the said case, the Supreme Court had enlisted certain types of recovery as impermissible.

"12. 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



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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 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.

(iii) 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.

(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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8. The above judgment is squarely applicable to the case of the petitioner as the petitioner's husband was a Group C Officer. Since the leave period relates to the year 2009 and the proceedings have been issued for recovery after a delay of 15 years and that too subsequent to his death. The respondents cannot effect recovery against a deceased employee more particularly after failing to initiate recovery proceedings during his life time. As the impugned recovery falls under (i), (ii) and (iii) of the impermissible recoveries settled in **Rafiq Masih**, I feel that the petitioner is entitled to get the relief as prayed.

9. In view of the above, this Writ Petition is allowed and the order in Ku.No.007517/561/Mu.Ni.A/Ni.Pi-1/Vu.2/2024 dated 14.05.2024 and the order in Letter No.2524/232/MePo/Ko(Ma)Ni/MuNi.A/NiPi1/Vu3/Ko.Thani/2024 dated 28.05.2024 on the file of the first respondent are quashed. No costs. Consequently, connected miscellaneous petition is closed.

02.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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R.N.MANJULA, J.

Nsr

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