



W.P.(MD).No.17431 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.17431 of 2021

and

W.M.P.(MD)No.14305 of 2021

S.Babu

... Petitioner

Vs.

- 1.The Additional Principal Secretary
to Government,
Rural Development & Panchayat
Raj Department,
Secretariat,
Chennai-600 009.
- 2.The Director of Rural Development
& Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai-600 015.
- 3.The Director of Local Fund Audit,
Amma Valagam, 4th Floor,
(Back Side of Veterinary Hospital),
Nandanam,
Chennai-600 035.



W.P.(MD).No.17431 of 2021

4.The Panchayat Union Commissioner,
Thovalai Panchayat Union,
Boothapandi Village & Post -629 852,
Kanyakumari District.

5.The District Collector,
Kanyakumari District,
Nagercoil.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to order of the 4th respondent in செ.மு.எண்.அ 1/3202/2016 dated 29.03.2021 and consequential order passed by the 3rd respondent in செ.மு.எண்.1002/உ.ஒ.ஒ.ச (2)/2021 dated 28.06.2021 to recover Rs.5,03,803/- from the Death cum Retirement Benefits set-aside the same and direct the respondents to grant full pension.

For Petitioner : Mr.N.Tamilmani

For Respondents : Mr.D.Gandhiraj,
Special Government Pleader

ORDER

This writ petition has been filed to call for the records pertaining to order of the 4th respondent in செ.மு.எண்.அ 1/3202/2016 dated 29.03.2021 and consequential order passed by the 3rd respondent in செ.மு.எண்.1002/உ.ஒ.ஒ.ச



W.P.(MD).No.17431 of 2021

(2)/2021 dated 28.06.2021 to recover Rs.5,03,803/- from the Death cum Retirement Benefits and to set-aside the same and direct the respondents to grant full pension.

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

2.1. The petitioner was initially recruited through District Employment Exchange, Nagercoil and was appointed as a Fitter on 24.06.1983 in the office of the Divisional Development Officer, Nagercoil, in the time scale of pay of Rs.295-5-315-10-475. During his service in Divisional Development Office, Nagercoil, his pay was fixed in the cadre of First Grade Fitter in terms of G.O.Ms.No.762 Finance (PC) Department, dated 20.08.1986, in the time scale of pay Rs.610-20-730-25-955-30-1075 notionally from 01.10.1984 vide proceedings dated 25.03.1987 of the Divisional Development Officer and the monetary benefits were also sanctioned with effect from 01.04.1986. While being so, the post of Divisional Development Officer, Nagercoil, came to be abolished and the petitioner was transferred to Panchayat Union, Thovalai,



W.P.(MD).No.17431 of 2021

Thovalai Taluk, Kanyakumari District and joined there on 21.04.1997 and was posted as Helper in the same time scale of pay.

2.2. Further, he was redesignated as Fitter as per his original appointment in compliance with the order passed by this Court on 01.06.1999 in W.P.No. 11827 of 1995, following which, the petitioner continued to get the same time scale of pay as he received in the office of Divisional Development Officer, Nagercoil. He was granted with selection grade as per G.O.Ms.No.187 Finance (PC) Department dated 21.05.2002 and special grade with effect from 01.06.1998 in the time scale of pay Rs.4300-100-6000. He continued to receive the same scale of pay till his retirement on 31.07.2017 and his last pay drawn in the office of Panchayat Union Commissioner as Skilled Assistant was Rs.57,500/- in the pay matrix level-13. Obviously, the petitioner's pension ought to have been fixed as per Tamil Nadu Pension Rules, 1978, as per the last pay drawn by him in the cadre of Skilled Assistant in the office of Commissioner, Thovalai Panchayat Union, Kanyakumari District. The proper pension proposal was sent by the Panchayat Union Commissioner, Thovalai, vide letter dated 27.03.2019, however, without looking into it with proper



W.P.(MD).No.17431 of 2021

perspective, the Director of Local Fund Audit Chennai, returned the same, vide proceedings dated 01.08.2019.

2.3. Though the District Collector of Nagercoil, that is, the 5th respondent and the 4th respondent had sent a detailed letter dated 23.05.2020 and 27.03.2019 respectively, supporting the case of the petitioner, on the basis of his last pay drawn in the cadre of Skilled Assistant, the petitioner was issued with only minimum pension of Rs.7850/- from the date of his retirement, that is, from 31.07.2017. Though the petitioner is entitled to receive the full pension, the same has not been sanctioned and hence, he made several representations in this regard and the last of which was on 04.01.2021. Despite receiving the same, on 06.01.2021, the respondents have not acted upon positively in favour of the petitioner. Hence, he filed W.P.(MD)No.2029 of 2021 and the same was allowed by this Court, by an order dated 05.02.2021. Pursuant to the same, the impugned order dated 29.03.2021 came to be passed by the 4th respondent and the consequential order dated 28.06.2021 came to be passed by the 3rd respondent. Challenging the same, this writ petition came to be filed.



W.P.(MD).No.17431 of 2021

WEB COPY

3. Pointing out the facts that the impugned order with respect to the recovery of excess amount of Rs.5,03,823 to be recovered from the death cum retirement gratuity of the petitioner, the learned counsel appearing for the petitioner submitted that, the impugned order came to be passed after a period of four years from the date of retirement of the petitioner, that is, from 31.07.2017. Relying upon Rule 71(3)(a) of the Tamil Nadu Pension Rules, 1978, the learned counsel appearing for the petitioner pointed out that the recoverable Government dues shall be accessed and adjusted only within a period of twelve (12) months from the date of retirement of the Government Servant and no such claim should be made by the Government Servant beyond a period of twelve (12) months from the date of retirement. However, in the instant case, the said action has been initiated by the respondent authorities beyond a period of four years and on that basis, pressed for allowing the writ petition.

4. The 5th respondent has filed a counter affidavit and the learned counsel appearing for the respondents submitted that, initially minimum pension was sanctioned to the petitioner by the 3rd respondent and full pension was not



W.P.(MD).No.17431 of 2021

sanctioned, in view of the corrections in his fixation of pay with effect from 01.06.1988. Thereafter, the 3rd respondent, vide letter dated 23.12.2019, addressed to the 2nd respondent to verify the corrections in the pay fixation of the petitioner with effect from 01.06.1988. On the basis of the clarification of the 2nd respondent, the petitioner had served in the cadre of Fitter Grade II upto 23.06.1993 and he is not entitled to get scale of pay of Rs.1200-2040 with effect from 01.06.1988 and it was instructed to refix the pay of the petitioner and to send revised pension proposal to the 3rd respondent. In compliance of the High Court order and on the basis of the clarification of the 2nd respondent, the 4th respondent had revised the pensionary benefits of the petitioner and as on the date the superannuation of the petitioner, that is, 31.07.2017, the salary of the petitioner was revised of Rs.55,800/- as per G.O.Ms.No.303, Finance (PC) Department dated 11.10.2017 and an excess amount of Rs.5,03,803/- paid to the petitioner by way of excess pay and allowances due to irregular refixation of pay till his retirement came to be ordered to be recovered from death cum retirement benefits of the petitioner. There is no irregularity in the said order and on that basis, he pressed for dismissal of the writ petition.



W.P.(MD).No.17431 of 2021

WEB COPY

5. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents. Carefully perused the materials available on record.

6. The detailed letters of the 4th respondent and the 5th respondent dated 27.03.2019 and 23.05.2020 respectively, it would throw light on the fact that the petitioner's service has been redesignated as Fitter and his scale of pay has been fixed in the cadre of Fitter Grade I and as such his last pay drawn was Rs. 57,500/- and that the respondents ought not to have revised the petitioner's salary to Rs.55,800/- as per G.O.Ms.No.303, Finance (PC) Department dated 11.10.2017, despite the clear clarification from the respondents 4 and 5. However, the mistake identified cannot be worked out after a lapse of more than four years.

7. The matter in hand is no more *res integra* and it has been already settled by the Hon'ble Apex Court in the case of ***State of Punjab and Others vs. Rafiq Masih (White Washer) reported in AIR 2015, SC 696*** and the



relevant portion which is applicable to the facts and circumstances of this case is extracted as follows:

“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 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*



W.P.(MD).No.17431 of 2021

WEB COPY

arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

8. Obviously, the petitioner is a Class III employee and he had retired from service on attaining the age of superannuation on 31.07.2017. The impugned order of recovery has been passed after a period of four years from the date of his retirement on basis of his last pay drawn which has been wrongly fixed as Rs.57,500/- instead of Rs.55,800/-.

9. In view of the fact that the petitioner's case would be squarely covered by para 12(i) and 12(iii) of the White washer's case and Rule 71(3)(a) of the Tamil Nadu Pension Rules, 1978, I have no hesitation to quash the impugned order of recovery passed by the 4th respondent dated 29.03.2021 and the consequential order passed by the 3rd respondent dated 28.06.2021 to recover the same from the death cum retirement gratuity of the petitioner and consequently the respondents are directed to repay the recovered amount of Rs.5,03,803/- back to the petitioner, within a period of twelve (12) weeks from the date of receipt of a copy of this order.



W.P.(MD).No.17431 of 2021

WEB COPY

10. Accordingly, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

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- 2.The Director of Rural Development
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W.P.(MD).No.17431 of 2021

L.VICTORIA GOWRI, J.

Sml

W.P.(MD).No.17431 of 2021

09.07.2024