



W.A(MD)No.602 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESHKUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.602 of 2024
and
CMP(MD)No.4263 of 2024**

1. The Commissioner,
Madurai Corporation,
Madurai.

2. The Assistant Commissioner(Personnel),
Madurai Corporation,
Madurai.

... Appellants

vs.

1. V.Sankaralingam

2. The Principal Secretary to Government,
Municipal Administration and Water Supply,
Secretariat, Fort.St. George,
Chennai-600 009.

3. The Director of Municipal Administration,
Ezhilagam,
Chepauk,
Chennai-600 005.

4. The Deputy Director,
Local Fund Audit,
Madurai Corporation,
Madurai.

... Respondents



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Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 03.02.2023 made in W.P(MD)No.1407 of 2018.

For Appellant : Mr.S.Vinayak
For R1 : Mr.A.Robinson
For R2 to R4 : Mr.A.Kannan, Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by **R.SURESHKUMAR, J.**)

This writ appeal has been directed against the order passed by the Writ Court, dated 03.02.2023, made in W.P(MD)No.1407 of 2018.

2. The 1st respondent was the employee of the appellant Corporation. He was working as a Road Mazthoor(unskilled worker) initially in the appellant Corporation and he was appointed as such on 01.10.1979. Subsequently, he was given selection grade on 07.08.1992 and special grade on 07.08.2002.

3. In that capacity, he had been working till his superannuation where he reached the superannuation on 30.06.2016 and retired from service.

4. Thereafter, the Government issued G.O.Ms.No.234 Finance(pay cell) Department, dated 01.06.2009, under which, the 1st respondent was entitled to get a revised pension which he wanted to be fixed. Therefore, his



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representation was directed to be considered through the order passed in the earlier writ petition filed by him, pursuant to which, having been considered and the amount of the revised pension having been fixed, the commutation amount also having been arrived at, was paid to the 1st respondent, by the appellant Corporation. This order was passed on 15.12.2015. When that being so, after sometime, a recovery order had been made, as if that, a sum of Rs. 1,10,760/- had been excessively paid and in order to recover the same, an order had been passed on 20.11.2017, which was challenged before the Writ Court in the writ petition in W.P(MD)No.1407 of 2018.

5. The learned Judge who heard the said writ petition, applying the ratio laid down in the judgment of the Hon'ble Supreme Court in ***State of Punjab vs. Rafiq Masih (Whiter Washer's case)*** reported in ***2015 (4) SCC 334***, has allowed the writ petition, as against which, the present appeal has been filed.

6. Mr.A.Kannan, learned Additional Government Pleader appearing for the respondents 2 to 4, would contend that, the said fixation of pension since has been excessively fixed on the basis of the misrepresentation made by the 1st respondent, the analogy that has been held in the **White Washer's case**



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(cited supra) of the Hon'ble Supreme Court, may not be applied to the present facts of the case. Therefore, applying the said ratio, since the writ petition was allowed by the Writ Court through the impugned order, the same is liable to be interfered with, he contended.

7. We have heard Mr.S.Vinayak, learned counsel appearing for the appellant, Mr.A.Robinson, learned counsel appearing for the 1st respondent and Mr.A.Kannan, learned Additional Government Pleader appearing for the respondents 2 to 4.

8. We have gone through the documents filed before this Court including the order, under which, the revised pension had been fixed by the appellant Corporation towards the 1st respondent.

9. The Government had issued G.O.Ms.No.234, Finance(pay cell) Department, dated 01.06.2009, based on which only, such a fixation had been made and moreover, the said fixation having been made, where commutation request made by the 1st respondent also was accepted by the appellant Corporation and ultimately, such commutation amount also had been paid and the remaining pension was fixed at Rs.3,747/-.



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10. All these orders had been passed consciously after having considered the merits of the request made by the 1st respondent and therefore, after having passed such an order, now the appellant Corporation cannot take a stand that such a decision taken by the Corporation is only based on the misrepresentation given by the 1st respondent.

11. Absolutely, there has been no material to establish that there has been a fraud or misrepresentation on the part of the 1st respondent to seek for such a revised pension.

12. Therefore, certainly, the law that has been declared by the Hon'ble Supreme Court in **White Washer's case** (cited supra), would apply to the present facts of the case, as the employee retired from service on 30.06.2016. Therefore, as per Clauses (i) and (ii) of the operative portion of the **White Washer's case** (cited supra), the recovery cannot be made from a retired employee at least one year prior to the retirement. Therefore, under that category, the recovery sought to be made against the 1st respondent cannot be approved.



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13. Therefore, we do not find any reason to interfere with the order passed by the learned Judge in the impugned order, as the learned Judge has rightly held by applying the ratio of the **White Washer's case** (cited supra) in the present facts and circumstances. Hence, the Writ Appeal fails. Accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.)

(G.A.M., J.)

05.04.2024

Index : Yes / No
Neutral Citation : Yes / No
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