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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/3/2025

C O R A M

The Hon'ble **Mrs.JUSTICE BHAVANI SUBBAROYAN**

Writ Petition No.19614 of 2023

M.Tamil Selvan ... Petitioner

Vs

1. State
   rep. By its Secretary
   Municipal Administration and
   Water Supply Department
   Fort St George
   Chennai 600 009.
2. The Director of Local Fund Audit
   Integrated Finance Department
   Offices Complex
   4th Floor, No.571 Anna Salai
   Nandanam
   Chennai 600 035.
3. The Commissioner
   Gudiyatham Municipality
   Vellore District.
4. The Secretary
   Thiruppathur Municipality Employees
   Co-operative Thrift and Credit Society
   Municipal Office Campus
   Thiruppathur
   Thiruppathur District.

5. The Commissioner



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Arani Municipality
Arani. ... Respondents

(R.5 – suo motu impleaded as per order
dated 9/1/2025 in W.P.No.18614 of 2023
by JSNPJ)

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings of the second respondent in Ni.MuNo.12290/MPV (3)/20 dated 29/8/2020, quash the same and demand made by the fourth respondent and consequently, direct the respondents to refund the attached amount along with 18% interest to the petitioner.

| | | |
|---|---|---|
| For petitioner | ... | Mr.A.R.Nixon |
| For respondents | ... | Mr.T.N.Rajangam<br>Government Advocate<br>for R.R.1 to 3.<br><br>Mr.V.Ramesh<br>for R.4.<br><br>Mr.S.Prabhakaran<br>Government Advocate<br>(Education)<br>for R.5. |

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**O R D E R**

This writ petition has been filed to quash the order dated 29/8/2020 of the second respondent in Ni.MuNo.12290/MPV (3)/20, and consequently, direct the respondents to refund the attached amount along with 18% interest to the petitioner.

2. Brief facts that led to the filing of the writ petition are as follows:-

The petitioner was appointed as Health Assistant in Trichy Municipality on 10/12/1984 and retired as Sanitary Officer on 30/4/2020, on attainment of superannuation. The last drawn pay was Rs.75,900/-. The Local Fund Audit has revised the scale of pay, on 18/10/2020, i.e., after the retirement of the petitioner, vide Proceedings in Ni.Mu.No.12290/MPV(3)/2020 dated 29/8/2020. While the petitioner was in service, he was ordered to recover a sum of Rs.8,70,288/- for pay fixation of Directorate of Local Fund Audit. Apart from that a sum of Rs.8,67,878/- has been recovered from DCRG and handed over to the Thirupattur Municipality Employees Co-operative Thrift and Credit Society.

3. While the petitioner was in service, he stood as a guarantor for



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Riyaz Khan for a loan of Rs.4,00,000/- from Thirupattur Municipal Employees Co-operative Thrift and Credit Society, Thirupattur. While in service, the said Riyaz Khan died on 3/1/2016. The terminal benefits or death benefits were not claimed by the legal heirs of the deceased. The Municipality had started to recover a sum of Rs.12,000/- p.m., from the salary of the petitioner. On the objection made by the petitioner, the amount which was already recovered was refunded to the petitioner. Thereafter, the Municipality came to the conclusion that the guarantor alone is liable to pay the money towards the loan amount payable by Riyaz Khan and arrived at a sum of Rs.3,89,521/- as due towards principal, Rs.4,68,224/- towards interest on the loan amount and the penalty of Rs.10,133/-, and ordered to recover a sum of Rs.8,67,878/- from the petitioner's terminal benefits, vide Proceeding of the Local Fund Audit in Ni.Mu.No.12290/MPV (3)/2020 dated 29/8/2020. But the respondents have not taken any steps to recover the money from the loanee, and have straightaway ordered to recover the amount from the terminal benefits of the surety/petitioner, after the retirement of the petitioner. Being aggrieved, the petitioner has come forward with the instant writ petition.



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4. The Director of Local Fund Audit, Nandanam, has filed a counter affidavit on behalf of the second respondent, wherein it is stated that the second respondent has deducted a sum of Rs.8,67,878/- from the pensionary benefits of the petitioner as per the instructions given by the third respondent viz., the Commissioner of Gudiyatham Municipality, and the recovered amount has been sent to Gudiyatham Municipality through cheque number 938587. It is further stated in the counter affidavit that the petitioner has falsely claimed that a sum of Rs.8,70,288/- and Rs.8,67,878/- have been deducted from the pensionary benefits, but only a sum of Rs.8,70,288/- has been deducted from the pensionary benefits.

5. In the counter affidavit filed by the third respondent, Commissioner, Gudiyattam Municipality, it is stated that while disbursing the terminal benefits, all outstanding dues had to be recovered. As there was a request by the fourth respondent, a sum of Rs.8,67,878/- was deducted. Third respondent acted only on the request made by the fourth respondent and did not act unilaterally or illegally.

6. The Secretary of Tirupattur Municipality Employees Co-operative



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Credit Society Ltd.,/fourth respondent has filed a counter affidavit, wherein it is stated that as the Municipal Commissioner, Arni, failed to recover the loan dues from the terminal benefits of the deceased borrower Riyaz Khan, a reference was made to the Municipal Commissioner, Gudiyatham being the Pay Disbursing Officer of the writ petitioner regarding the recovery of the said dues from the petitioner's terminal benefits in view of the express consent made in the surety bond executed by the petitioner along with 16.5% on the total amount of principal and interest, that is due from the date of closing the loan account to the date of recovery of the amount from all the borrower and/or surety and from the properties belonging to them.

7. The Commissioner, Arni Municipality, has filed a counter affidavit, on behalf of the fifth respondent, wherein it is stated that according to their own records, a sum of Rs.14,000/- was remitted from January 2015 to July 2015, Rs.4,000/- for October and November 2015, and Rs.5,000/- for December 2015, totalling Rs.23,000/-. Due to the death of Mr.Riyazkhan, his entire terminal benefits is now pending in the office of the fifth respondent. But none of the legal heirs of Riyazkhan have contacted the fifth respondent with regard to the disbursement of retirement benefits of



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Riyaz Khan.

8. Heard Mr.A.R.Nixon, learned counsel for the petitioner, Mr.T.N.Rajangam, learned Government Advocate for the respondents 1 to 3, Mr.V.Ramesh, learned counsel for the fourth respondent and Mr.S.Prabhakaran, learned Government Advocate (Education) for the fifth respondent.

9. The learned Government Advocate appearing for the respondents 1 to 3 would submit that since the petitioner stood as a guarantor towards the loan availed by Riyaz Khan, fourth respondent made a request to deduct Rs.8,67,878/- from the terminal benefits of the writ petitioner and remit the same to their account.

10. The learned counsel appearing for the fourth respondent would submit that out of the sum of Rs.8,67,878/- that was recovered from the retirement benefits of the writ petitioner by the Municipal Commissioner, Gudiyatham, a sum of Rs.7,96,968/- that was outstanding against the loan of the borrower was appropriated towards the borrower's loan account, and the



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balance of Rs.70,900/- was refunded to the writ petitioner by way of cheque No.04766 dated 30/7/2021.

11. The learned Government Advocate appearing for the fifth respondent would submit that after receiving the letter from the fourth respondent, the reminder letter from the Regional Director of Municipality, Vellore, and the request letter of Riyaz Khan; the Commissioner, Arni Municipality started deducting Rs.2,000/- out of the monthly pay of Rs.24,163/- from Riyaz Khan's salary from January 2015 to December 2015, with the exception of August and September 2015, during which he was on medical leave.

12. Perused the materials available on record.

13. It is an admitted fact that one Riyaz Khan was employed as a Junior Assistant in the office of Thirupathur Municipality, where he took a loan of Rs.4,00,000/- on 14/1/2011, from the fourth respondent. The petitioner stood as a guarantor for the loan and executed a surety bond in favour of the fourth respondent. Riyaz Khan agreed to repay the loan with



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an interest rate of 16.5%. He failed to repay the loan and there was an outstanding amount of Rs.3,89,521/- towards the outstanding principal. Additionally, he was transferred to Thiruvathipuram Municipality, where he was suspended and later reinstated and subsequently, he was transferred to Arani Municipality.

14. Riyaz Khan joined the fifth respondent Municipality on 14/11/2014 and worked there until his death, i.e., on 3/1/2016. He received salary only for the period from 15/11/2014 to 31/12/2015. Vide, letter, dated 2/12/2014, Secretary of the fourth respondent sent a letter to the fifth respondent Municipality, wherein it was stated that the borrower had failed to make regular instalments and hence, the outstanding balance on the loan, amounts to Rs.3,89,521/- towards principal, Rs.1,22,204 towards interest and Rs.4,659/- towards delayed interest. After receiving the letter from the fourth respondent and the reminder letter from the Regional Director of Municipality, Vellore, the fifth respondent started deducting Rs.2,000/- out of the net pay of Rs.24,163/-, from Riyazkhan's salary from January 2015 to

December 2015, with the exception of August and September 2015, during



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which Riyaz Khan/borrower was on medical leave.

15. Only after scrutinising the pension proposal, the Director, Local Fund Audit, Nandanam, sanctioned the pensionary benefits of the petitioner, as per the petitioner's last pay drawn, i.e., Rs.75,900/-. Based on the letter No.2553/2019/C1 dated 15/9/2020, of the third respondent, the second respondent had ordered a recovery of Rs.8,67,878/- from the Death-cum-Retirement-Gratuity.

16. A bare reading of the letter dated 13/3/2025 of the Commissioner, Arani, indicates that since the terminal benefits of Riyaz Khan was not claimed by the legal heirs of Riyaz Khan, the second respondent had deducted the money from the writ petitioner's benefits, as per the instructions given by the third respondent and paid the amount to the fourth respondent. In the above said circumstances, this Court is inclined to quash the order passed by the second respondent dated 29/8/2020.

17. In the result, this writ petition is allowed and the order dated 29/8/2020 passed by the second respondent in Ni.Mu.No.12290/MPV



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(3)/20, is hereby quashed. The fourth respondent is directed to consider the claim of the petitioner and calculate the amount which is actually due to the petitioner, fix a nominal rate of interest, and disburse the amount in the manner known to law, preferably within a period of three months from the date of receipt of a copy of this order. No costs.

14/3/2025

mvs.

Index: Yes/No
Neutral Citation: Yes/No

To

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5. The Commissioner, Arani Municipality, Arani.

V.BHAVANI SUBBAROYAN,J

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