

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.26832 of 2016
and
W.M.P.No.23060 of 2016

K.P.Shanmugam
S/o.Palanisamy
No.2/84, Kumaravalasu
Vellakoil
Thiruppur District

... Petitioner

...Vs...

1. The Commissioner
Vellakoil Municipality
Vellakoil
Thiruppur District

2. The Commissioner
Pollachi Municipality
Pollachi
Coimbatore District

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records in pursuant to the impugned order issued by the 1st respondent in proceedings Na.Ka.No.1043/2015/C 1, dated 22.06.2016 and the impugned letter issued by the 1st respondent in proceedings Na.Ka.No.1043/2015/C1 dated 22.06.2016 and quash these orders.

For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.A.S.Thambusamy & B.Anand,
for R1 & R2

ORDER

Heard Mr.R.Prem Narayan, learned counsel appearing for the petitioner and Mr.A.S.Thambusamy, learned counsel who has taken notice for the respondents 1 & 2. With the consent of either side, the writ petition itself is taken up for final disposal.

2. In this writ petition, the petitioner challenges an order passed by the first respondent dated 22.06.2016, in and by which the first respondent seeks to recover from the salary of the petitioner, the overtime wages paid to the petitioner, over and above the limits prescribed under the Government Order in G.O.Ms.No.1592, dated 05.08.1976 followed by the instruction given by the Assistant Director of Town Panchayat, dated 05.11.2001.

3. The facts which are necessary for the disposal of the writ petition was that the petitioner was appointed as an Electrician Grade-I in the first respondent Municipality. Subsequently, he was transferred and now working as Electrician Grade-I in the second respondent Municipality. During the period when the petitioner worked in the first respondent Municipality, due to shortage of electricians, the petitioner was directed to work overtime and the overtime wages was sanctioned by the first respondent. This is now sought to be recovered on the only ground that the sanctioning authority did not obtain the prior approval of the Assistant Director of Town Panchayat, as mandated by the circular dated 05.11.2001, which is a fall out of the order passed by the Government in G.O.Ms.No.1592, dated 05.08.1976.

4. On a reading of the said Government Order, it is seen that there is no bar for employing the staff of the Municipality beyond the period of 8 hours in a day, but the only embargo is they should not be engaged on overtime basis exceeding 120 hours in a month and should not be permitted and paid except with the prior approval of the higher authorities in time of emergency. Thus, there is no absolute bar in engaging such technical staff on overtime allowance but the norms fixed appears to be that if their engagement on overtime basis exceeds 120 hours, the prior approval of the higher authorities had to be obtained.

5. Admittedly, the petitioner is only a electrician, which is a Grade C post and this Court can safely presume that the petitioner would not have been aware of such intricate directions issued by the Government, that too, as early as on 05.08.1976. Therefore, the person to be blamed is the person who has engaged the services of the petitioner on overtime basis, beyond 120 hours and the person who has sanctioned the wages for the said period.

6. Therefore, it cannot be a case where the petitioner has either defrauded the respondent Municipality or siphoned of funds or made a misrepresentation. The prior approval obviously cannot have been obtained by the petitioner and the

responsibility would lie with the Commissioner and other higher officials of the Municipality.

7. At this juncture, it would be worthwhile to refer to the recent decision of the Hon'ble Supreme Court made in the case of State of Punjab and Others v. Rafiq Masih (White Washer) and Others reported in (2015) 4 Supreme Court Cases 334. In the said case, the Hon'ble Supreme Court heard a batch of matters where monetary benefits were given in excess of their entitlements. While considering as to whether such amount should be recovered, the Hon'ble Supreme Court observed that it was 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. After referring to various other decisions of the Hon'ble Supreme Court, a summary of few situations where recoveries by the employers would be impermissible in law were listed out and it would be beneficial to refer to the operative portion of the order and direction issued by the Hon'ble Supreme Court.

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

From the above, it is seen that the Hon'ble Supreme Court has held that the recoveries from the employees belonging to Class III and Class IV service (Group C and Group D service) would be impermissible.

8.The case on hand is a far better case on facts than what was decided by the Hon'ble Supreme Court. As pointed out earlier, the approval for engaging a technical staff on overtime basis beyond 120 hours in a month rests with the employers and not with the petitioner, who is admittedly a Group C staff. Hence, the impugned proceedings are held to be unsustainable and illegal.

9.Accordingly, the writ petition is allowed and the impugned order is quashed. Furthermore, it is pointed out that the overtime allowance claimed by the authorities is only within 120 hours per month. If that be the case, it does not in any manner violate the Government Order. Hence, on that ground also, the impugned orders are liable to be set aside. Consequently, the miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner
Vellakoil Municipality
Vellakoil
Thiruppur District

2. The Commissioner
Pollachi Municipality
Pollachi
Coimbatore District

+1cc to Mr.A.S.Thambusamy & B.Anand, Advocate, S.R.No.43810

+1cc to Mr.R.Prem Narayan, Advocate, S.R.No.44284

W.P.No.26832 of 2016

and

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SKV(CO)

CA(29/08/2016)