

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.5235 to 5241 of 2016 AND

WMP.NOS.4602 TO 4610/2016

V.Nagarajan .. Petitioner in W.P.No.5235 of 2016
K.Bagyalakshmi .. Petitioner in W.P.No.5236 of 2016
A.Moorthy .. Petitioner in W.P.No.5237 of 2016
K.Ganeshan .. Petitioner in W.P.No.5238 of 2016
C.Velusamy .. Petitioner in W.P.No.5239 of 2016
K.S.Poonkothai .. Petitioner in W.P.No.5240 of 2016
M.Murugesan .. Petitioner in W.P.No.5241 of 2016

-Vs-

1. The Commissioner of
Municipal Administration
Chennai 600 005.

2. The Commissioner
Tiruppur City Municipal Corporation
Tiruppur District.

..Respondents 1 & 2 in all the W.P's

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the proceedings Na.Ka.No.C1/0426/2016 dated 14.01.2016, issued by the second respondent herein and to quash the same and to direct the respondents herein to continue to grant the pay, in accordance with the proceedings of the second respondent in Na.Ka.No.C1/6559/2013, dated 04.01.2014; Na.Ka.No.C1/2205/2014 dated 8.8.2014; Na.Ka.No.C1/2204/2014 dated 2.7.2014; Na.Ka.No.C1/2207/2014 dated 23.7.2014 respectively, and to reimburse any amount recovered from the petitioners.

For Petitioners :: Mr.M.Ravi

For Respondents :: Mr.R.Vijayakumar
Additional Government Pleader for R1
Mr.S.Silambanan
Senior Counsel for
Mrs.P.Shanthi for R2

ORDER

These seven writ petitions have been filed challenging the impugned orders dated 14.1.2016 issued by the second respondent in respect of each of the petitioners, to quash the same with a direction to the respondents to continue to grant the pay with regard to the earlier proceedings of the second respondent dated 4.1.2014, 8.8.2014, 2.7.2014 & 23.7.2014 respectively and thereupon to reimburse any amount recovered from the petitioners.

2. Learned counsel for the petitioners submitted that the petitioners were appointed as Wiremen and Helper respectively in the erstwhile Tiruppur Municipality during the years 1989 to 1991 and they moved to the Selection Grade on completion of ten years service during the years 1999 to 2001. Subsequent to the upgradation of Tiruppur Municipality as Tiruppur City Municipal Corporation, they have been re-designated as Skilled Assistant Grade I or Skilled Assistant Grade II or Unskilled Assistant and they have been working for the past 25 years. While so, the second respondent had re-fixed their pay in the re-designated post in accordance with the Government Orders with effect from 1.1.2006. When the matters stood as above, the second respondent, all of a sudden, has issued the impugned proceedings of reduction in pay and recovery without issuing any prior notice to the petitioners. Therefore the petitioners, who are affected, are before this Court. Adding further, the learned counsel submitted that when the orders of recovery have been passed, the second respondent ought to have given at least the minimum opportunity of hearing to the petitioners. As he has failed to give any notice whatsoever before passing the orders of recovery, the impugned proceedings are liable to be set aside, as they are in violation of the principles of natural justice.

3. Learned senior counsel appearing for the second respondent, opposing the above prayer, taking support from the counter affidavits filed by the second respondent, submitted that the scale of pay of the petitioners were revised as per the One Man Commission's Government Order No.338, Finance Department (Pay Cell) Department dated 26.8.2010 and also as per the instructions issued by the Commissioner of Municipal Administration vide R.O.C.No.45529/F3/2010-1 dated 1.10.2012. Accordingly, the pay of the petitioners have been re-fixed with effect from 1.1.2006 notionally with the monetary effect from 1.8.2010 in the scale of pay of Rs.5200-20200 with the Grade Pay of Rs.2600 and Rs.1900, as the case may be, and that the arrears of pay after re-fixation were also provided to them. However, the employees associations and certain heads of department sought for clarification as to the procedure/guidelines to be followed in the case of fixation of pay of the employees in Selection Grade/Special Grade post. This was examined by the Government in detail vide circular No.63305/P.C/2010 dated 8.11.2010 in the light of the orders issued in para-4 of the

G.O.Ms.No.234, Finance (Pay Cell) Department dated 1.6.2009. As per Serial No.9 in the Annexure of the circular, the petitioners are not entitled to any revision of pay, but it was wrongly taken and erroneously fixed. In view of the above, the learned senior counsel submitted that the Commissioner of Municipal Administration, Chennai has directed all the Municipal Commissioners/Regional Directors of all the Corporations vide the letter dated 21.5.2015 to re-fix the pay of such category of employees so as to admit the pension proposals. Pursuant thereto, the impugned proceedings have been issued, hence, the same cannot be found fault with.

4. But this Court is not able to find any justification to support the impugned orders. The reason is that admittedly the petitioners were re-designated as Skilled Assistant Grade I or Skilled Assistant Grade II or Unskilled Assistant with effect from 1.1.2006 and the second respondent came forward to re-fix their pay with effect from 1.1.2006. Subsequently, after working out the annual increment in the selection grade/special grade post, their scale of pay was re-fixed. While so, if the second respondent finds that there was a wrong fixation of pay, the law requires that the affected persons, namely, all the petitioners ought to have been issued with formal notices calling upon them to submit their explanation as to why the wrong fixation of pay followed by the payment of arrears to which they are not legally entitled to, on the basis of the One Man Commission recommendations, should not be varied followed by the recovery. Since the second respondent, in the present cases, has not admittedly issued any prior notice calling upon the petitioners to give their explanation as to why their scale of pay should not be re-fixed or revised based on the One Man Commission recommendations, the impugned orders are liable to be set aside on the ground of violation of the principles of natural justice. Accordingly, on the sole ground, the impugned orders are set aside. However, it is open to the respondents to issue individual notice to each of the petitioners and seek his/her explanation as to why his/her scale of pay should not be re-fixed so as to proceed further in accordance with law. The writ petitions are disposed of accordingly. Consequently, W.M.P.Nos.4602 to 4610 of 2016 are closed. No costs.

ss

Sd/-
Asst.Registrar

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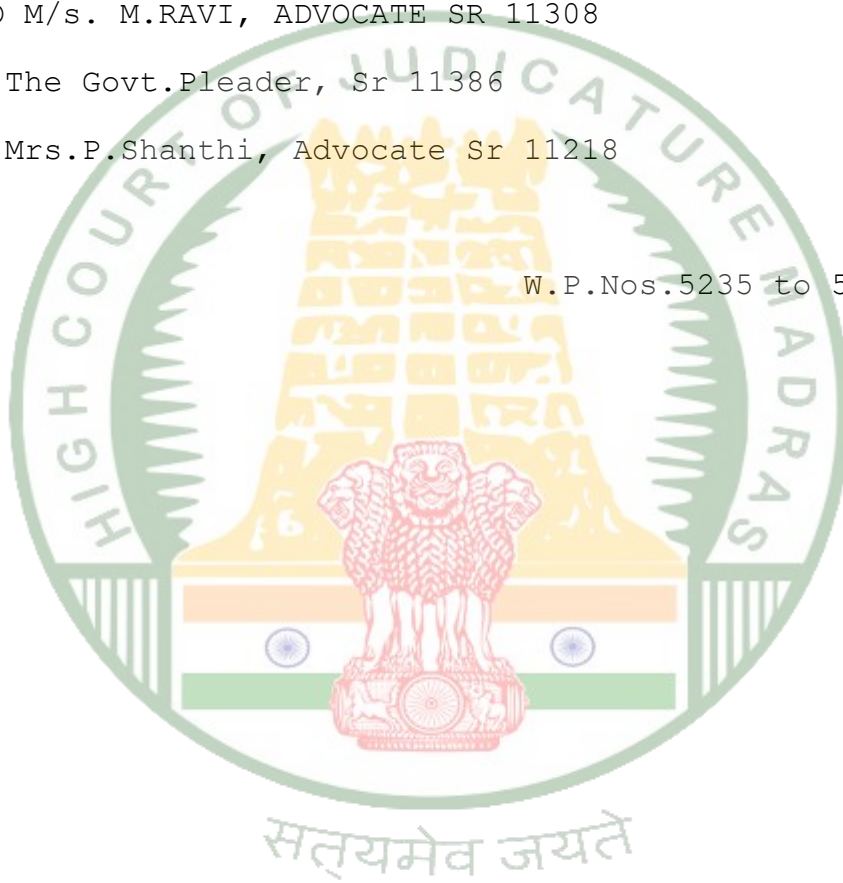
Sub Asst. Registrar

To

1. The Commissioner of
Municipal Administration
Chennai 600 005.
 2. The Commissioner
Tiruppur City Municipal Corporation
Tiruppur District.
- + 7 CCS TO M/s. M.RAVI, ADVOCATE SR 11308
- + 1 cc to The Govt.Pleader, Sr 11386
- + 1 cc to Mrs.P.Shanthi, Advocate Sr 11218

KR/1/4/16

W.P.Nos.5235 to 5241 of 2016



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