



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.12.2016

CORAM:

THE HONOURABLE Mr. JUSTICE S. VAIDYANATHAN

W.P. (MD) Nos. 24134 and 24135 of 2016

and

W.M.P. (MD) Nos. 17414 and 17415 of 2016

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W.P. (MD) No. 24134 of 2016:

J. David

... Petitioner

Vs.

1. The Assistant Director of Local Fund Audit,
Nachi Street,
Virudhunagar 626 001.
Virudhunagar District.

2. The Commissioner,
Virudhunagar Municipality,
Virudhunagar 626 001.
Virudhunagar District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent i.e. the Commissioner of Municipality, Virudhunagar relating to Na.Ka.No.C1/12154/2012 dated 14.10.2016 and quash the same and consequently, order to refund the amount already recovered from the pay of the petitioner from the month of October 2016.

W.P. (MD) No. 24135 of 2016:

R. Thiruppathi

... Petitioner

Vs.

1. The Assistant Director of Local Fund Audit,
Nachi Street,
Virudhunagar 626 001.
Virudhunagar District.

2. The Commissioner,
Virudhunagar Municipality,
Virudhunagar 626 001.
Virudhunagar District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent i.e. the Commissioner of Municipality, Virudhunagar relating to Na.Ka.No.C1/12154/2012 dated 15.09.2016 and quash the same and consequently, order to refund the amount already recovered from the pay of the petitioner from the month of September



For Petitioners : Mr.S.Visvalingam
For R1 : Mr.S.Sathish Kumar, AGP
For R2 : Mr.M.Muthugeethayan

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COMMON ORDER

These Writ petitions are filed to issue a Writ of Certiorarified Mandamus, calling records in Na.Ka.No.C1/12154/2012 dated 14.10.2016 and 15.09.2016 passed by the 2nd respondent and quash the same and consequently, refund the recovered amount from the pay of the petitioners from the month of October 2016 and September, 2016 respectively.

2.The petitioners are the employee in the respondents Municipality. As per the Audit Report, the 2nd respondent by a proceedings dated 14.10.2016 and 15.09.2016 in Na.Ka.No.C1/12154/2012 ordering to recover certain amounts from the monthly salary of the petitioners in instalments. Aggrieved over the same, the present Writ petitions have been filed to quash the said proceedings.

3.Heard the learned counsel for the petitioners, learned Additional Government Pleader appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

4.The learned counsel for the petitioners submitted that without issuing notice and without providing an opportunity to the petitioners, the order of recovery is effected by the respondents.

5.The learned counsel appearing for the 2nd respondent submitted that the officer to whom the payment was made at the first instance was clearly stated that any payment found to have been made in excess would be required to be refunded and the petitioners have given an undertaking while opting for the revised pay scale. Hence, there is no interference is necessary in the impugned order passed. He also relied on a decision of the Hon'ble Supreme Court in Civil Appeal No.3500 of 2006 (High Court of Punjab and Haryana and others Vs. Jagdev Singh). In paragraph No.11, it has held as follows:

"11.The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

6.In view of the judgment cited supra, once the petitioners gave an undertaking that any payment found to have been made in excess would be required to be refunded, they cannot contend that the impugned order is illegal. Accordingly, these Writ petitions



are dismissed. No costs. Consequently, connected W.M.Ps. are closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

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Sub Assistant Registrar

To

1. The Assistant Director of Local Fund Audit,
Nachi Street,
Virudhunagar 626 001.
Virudhunagar District.

2. The Commissioner,
Virudhunagar Municipality,
Virudhunagar 626 001.
Virudhunagar District.

+2 CC to M/s. S.VISVALINGAM, Advocate, SR No. 82247, 82246

+2 CC to M/s. M.MUTHUGEETHAYAN, Advocate, SR No. 82172, 82173

+2 CC to M/s. THE SPECIAL GOVERNMENT PLEADER, SR No. 82969, 82965

NBJ

PSM/KP/SAR4/17.04.2017/3P/9C

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