



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2016

CORAM:

THE HONOURABLE Mr. JUSTICE S. VAIDYANATHAN

W.P. (MD) No. 24352 of 2016

and

W.M.P. (MD) No. 17586 of 2016

V. Nagaraj

... 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 records of the second respondent i.e. the Commissioner of Municipality, Virudhunagar relating to Na.Ka.No.C1/12154/2012 dated 25.10.2016 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.

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

O R D E R

This Writ petition is filed to issue a Writ of Certiorarified Mandamus, calling records in Na.Ka.No.C1/12154/2012 dated 25.10.2016 passed by the 2nd respondent and quash the same and consequently, refund the recovered amount from the pay of the petitioner from the month of October 2016.

2. The petitioner is the employee in the respondents Municipality. As per the Audit Report, the 2nd respondent by a proceedings dated 25.10.2016 in R.C.No.C1/12154/2012 ordering to recover certain amounts from the monthly salary of the petitioner in instalments. Aggrieved over the same, the present Writ petition has been filed to quash the said proceedings.

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



4.The learned counsel for the petitioner submitted that without issuing notice and without providing an opportunity to the petitioner, 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 petitioner has 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 petitioner gave an undertaking that any payment found to have been made in excess would be required to be refunded, he cannot contend that the impugned order is illegal. Accordingly, this Writ petition is dismissed. No costs. Consequently, connected W.M.P.is closed.

Sd/-
Assitant Registrar(C)

/True copy/

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.

+1CC TO M/S.M.MUTHUGEETHAYAN, Advocate Sr.No.82174

+1CC TO M/S.S.Visvalingam, Advocate Sr.No.82245

+1cc to Special Government Pleader, Sr.No.82970

Nbj

AAM-SV MMS 08.03.2017 2P 6C