

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 20.09.2017****CORAM****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P.Nos.13697 to 13709 of 2016 and
connected W.M.Ps.****W.P.No.13697 of 2016**

S.Selvam

.. Petitioner

vs

1.The Secretary to Government
Government of Tamil nadu
Municipal Administration and Water Supply Dept.,
Fort St.George, Chennai-600 009.

2.The Commissioner
Arcot Municipality
Arcot, Vellore District.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records from the second respondent relating to the proceedings dated 26.02.2016 bearing reference No.Na.Ka.No.2845/2012/H1, quash the same and consequently, direct the respondents 1 & 2 to restore /continue the pay/salary which the petitioner was drawing and would have drawn had the impugned proceedings was not issued, pay the difference together with the amounts already recovered with all other consequential benefits, within a time framed fixed by this Court together with interest at the rate of 18% per annum.

For Petitioners : Mr.S.Saravana Kumar
(in all Wps.)

For Respondents : Mr.K.Dhananjayan
(in all Wps.) Spl. Govt. Pleader

COMMON ORDER

All these Writ Petitions were filed challenging the orders of recovery issued by the second respondent in proceedings dated 26.02.2016, in and by which the Scale of Pay of the writ petitioners were revised and accordingly, the orders of recovery were passed to recover the excess payment from the writ petitioners' salary.

3.The learned counsel for the writ petitioners submits that the orders of Revision of Pay and the Orders of recovery were passed, without issuing any notice to the writ petitioners and the order affecting the right of salary shall not be issued without providing opportunities to the employee concerned. This apart, even in case of revision of pay, the recovery cannot be imposed in respect of Group-IV employees, since the mistake was not on their part nor the writ petitioners have misrepresented in respect of fixation of pay. Recovery can be imposed in respect of Group-IV employees only in

case of misrepresentation. However, while looking at the orders passed by the second respondent, this Court cannot find any such misrepresentation on the part of the writ petitioners.

4. This being the factum of the case, the orders of recovery are liable to be set aside. In this regard, the Hon'ble Supreme Court in the case of ***State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334]***, the Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgement, which is extracted hereunder:

"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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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.

Thus, the orders of recovery imposed on the writ petitioners herein who are working as Sanitary Workers are contrary to the legal principles settled by the Hon'ble Supreme Court, in the case cited supra.

5. Accordingly, the Writ Petitions are partly allowed and the orders impugned in these Writ Petitions, all dated 26.02.2016, issued by the second respondent in respect of recovery alone are quashed and as far as the Revision of Scale of Pay is concerned, the respondents are at liberty to correct the same in accordance with the Government Orders and Rules in force. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.09.2017

rpa

To

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Municipal Administration and Water Supply Dept.,
Fort St. George, Chennai-600 009.
2. The Commissioner
Arcot Municipality
Arcot, Vellore District.

S.M.SUBRAMANIAM,J.

Rpa



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