

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. Nos.15937, 16114, 16213 to 16215,16575, 16182, 17212, 17409 &
19452 of 2017
&
Connected Miscellaneous Petitions

A.Enoose

... Petitioner

Vs.

1. The Government of Tamilnadu,
Rep. By its Commissioner of Municipal Administration
and Water Supply Department,
Fort St. George, Chennai-600 009.
2. The Commissioner
Erode City Municipal Corporation,
Erode-638 001.
3. The Deputy Director of Local Fund Audit,
O/o. Erode City Municipal Corporation,
Erode.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.No.C1/1138/2017 dated 15.06.2017 on the file of 2nd Respondent and quash the same; consequently direct the Respondents to restore the petitioner's scale of pay at Rs.5200-

20200+1900 and continue to pay the same in the present post.

For Petitioner : Mr.R.Neelakandan for
M/s.P.Rajavel

For Respondents : Mr.M.Digvijayapandian,
Addl. Govt. Pleader for R1
Mr.M.Rajamathivanan for R2 & R3

COMMON ORDER

The orders of the revision of pay and recovery issued against the Writ Petitioners are under challenge in these writ petitions.

2.Learned counsel for the writ petitioners contended that the order passed in these writ petitions were issued without even issuing any show cause notice to the petitioners. Revision of pay and recovery cannot be imposed without providing opportunity to the writ petitioners to defend their case.

3.Learned counsel further stated that all these writ petitioners are working either in Group III or Group IV categories and the sudden revision of pay and recovery will affect their normal family life and they will not be in a position to meet out day to day expenses in their life.

4.Learned counsel appearing for the respondents are unable to dispute the fact that either notice or opportunity was given to the petitioners to defend their case in this regard. However, it is represented that the revision of pay and recovery was imposed based on the audit objections submitted by the third respondent (Officials of Local Fund Audit). Thus, the error occurred in the revision of pay has to be rectified. In this regard alone, revision of pay was effected and consequently, recovery was issued.

5.No doubt, if any error found in fixation of pay, it is left open for the Department to rectify the same in accordance with the procedures. However, recovery imposed on the employees, after many years, on the ground that there was an error in fixation cannot be accepted, in view of the fact that they have not committed any act of misrepresentation during the implementation of revision of pay. In the case of mis-representation on the part of the employees, the respondent may be right in imposing recovery but not otherwise. Thus, this Court is of the firm opinion that the error in pay fixation can be revised based on the audit objection but recovery cannot be effected, more specifically

against the employees working in the category of Clause III and IV. The Legal Principle in this regard is settled by the Hon'ble Supreme Court of India in the case of **State of Punjab v. Rafiq Masih** reported in (2015) 4 SCC 334. It is relevant to extract para-18 of the judgment stated supra:

“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 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 in 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.”

6. His Lordship Jagdish Singh Khehar, J, while speaking on behalf of the Bench held that recovery from the employees belonging to Class III and IV services (or Group C and Group D service) are impermissible. In the case on hand, admittedly the writ petitioners are working in the cadre of Class III and IV. Thus, the recovery imposed is impermissible in view of the legal principles settled by the Hon'ble Supreme Court of India in respect of the revision of pay. It is left open to the competent authority to revise the pay in accordance with the rules and the orders in this regard.

7. Accordingly, all these writ petitions stand allowed and the recovery imposed against the writ petitioners are quashed. However, it is left open to the respondents to rectify the errors in the revision of pay and thereafter

continue to pay the salary in accordance with rules. In the cases where the recoveries were effected, the respondents are directed to repay the amount to the petitioners, which were recovered from them.

08.08.2017

Speaking / Non-speaking order

Index : Yes/No

Internet : Yes/No

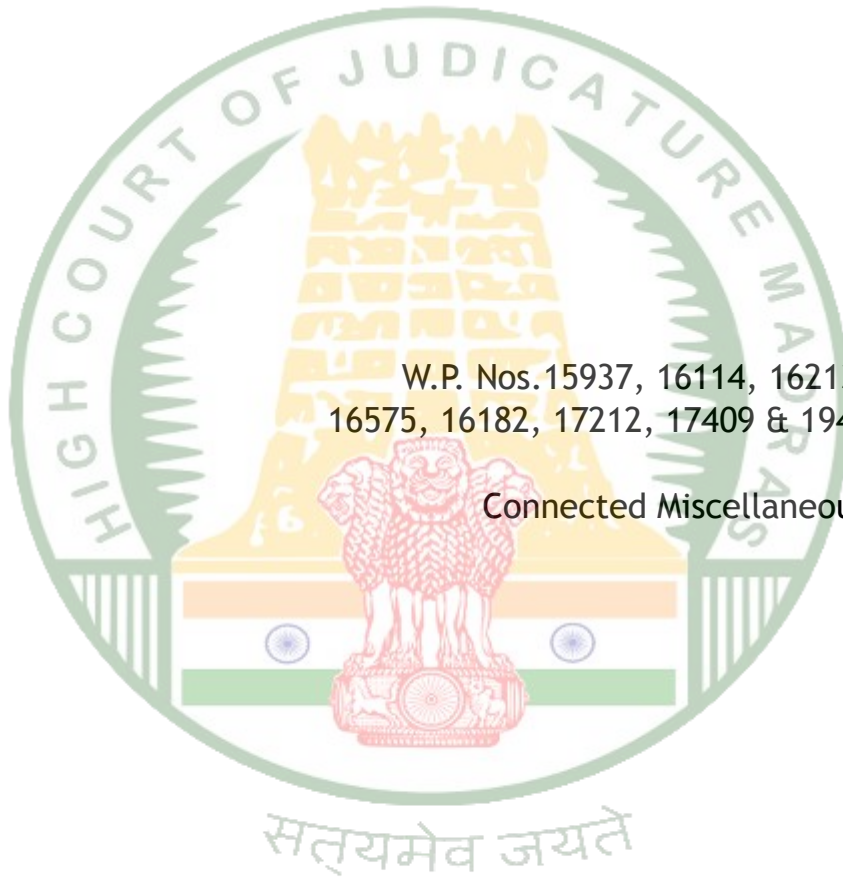
To

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S.M.SUBRAMANIAM J

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