

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 23.08.2017****CORAM****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****W.P.No.21340 of 2004****And****W.P.M.P.No.25782 of 2004**

John

... Petitioner

Vs.

The Commissioner
Sivaganga Municipality

... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in R.O.C. No.C1/Audit/04 dated 19.02.2004, on the file of the respondent and to quash the same as illegal, incompetent and without jurisdiction and to direct the respondent to pay the pensionary benefits to the petitioner on account of the death of his mother, V.Leelavathi, sanitary worker with the respondent.

For Petitioner : Mr.V.Raghavachari
For Respondent : Mr.M.Elumalai
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records in R.O.C. No.C1/

Audit/04 dated 19.02.2004, on the file of the respondent and to quash the same as illegal, incompetent and without jurisdiction and to direct the respondent to pay the pensionary benefits to the petitioner on account of the death of his mother, V.Leelavathi, sanitary worker with the respondent.

2.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondent.

3.The brief facts of the case are as follows: The petitioner's mother worked as a Sanitary worker with the respondent and she died on 16.05.2003. Since the petitioner's father predeceased his mother, the petitioner, his sister and brother were entitled to get the pensionary benefits of their mother and the petitioner's sister and brother gave consent for the petitioner to get the entire retirement benefits of their mother. The respondent also vide proceedings dated 02.03.2004 directed the pensionary benefits to be paid to the petitioner. Thereafter, the respondent passed the impugned proceedings dated 19.02.2004 stating that as per the audit report, the petitioner's mother was paid excess Dearness Allowance of Rs.16,316/- and the same was directed to be deducted from the gratuity amount payable to the petitioner's mother. Aggrieved by the

same, the petitioner made a representation to the respondent on 10.03.2004 and since no action was taken by the respondent, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner would submit that the said impugned order is non est in law, since no notice was issued and by mistakenly the employer paid the amount to the employee which cannot be recovered. He relied upon the decision of the Honourable Apex Court, reported in **(2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)**, the relevant portion of which, reads as follows.

"10. In view of the aforesaid constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the state, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the

employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

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 on 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 when 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.

5. The decision cited supra squarely applies to the present case on hand. Accordingly, the writ petition is allowed. No Costs. Consequently, the connected miscellaneous petition is also closed.

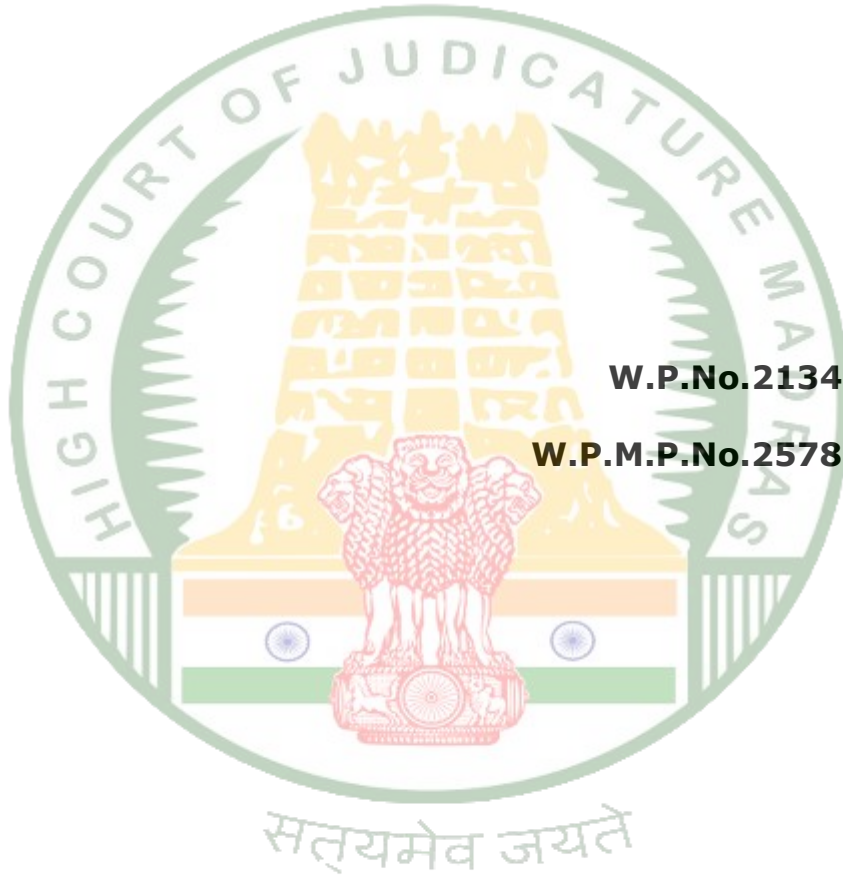
23.08.2017

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

The Commissioner
Sivaganga Municipality

M.DHANDAPANI,J.
pri



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