

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.29550 of 2013
and
M.P.No 1 of 2013

D.Kandasamy

... Petitioner

Vs.

The Commissioner,
Narasingapuram Municipality,
Athur Taluk, Salem District.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of respondent issued in Na.Ka.No.332/2013/A2 dated 24-09-2013 and quash the same and consequently to direct the respondent to continue the pay salary as per the proceedings of the respondent dated 27-06-2013 issued in Na.Ka.No.332/2013/A2 by refunding the already recovered amount.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondent : Mr.V.Jayaprakash Narayanan

O R D E R

The order of revision of scale of pay and recovery imposed in respect of the excess payment is sought to be quashed in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner is working as a Fitter in the respondent Municipality and the scale of pay as applicable to the cadre was erroneously fixed. The order impugned in this writ petition is issued by the respondent imposing revision of scale of pay and for a recovery. Undoubtedly, the authorities are at liberty to correct the errors, if any occurred in respect of the revision of the scale of pay. However, in respect of the recovery, the same cannot be imposed on account of the fact that there was no misrepresentation or otherwise on the part of the writ petitioner. The revision of scale of pay was granted at the instance of the

administration and therefore, the writ petitioner cannot be faulted with. In respect of the recovery the amount already paid, cannot be recovered.

3.The legal principles settled by the Hon'ble Supreme Court of India in the case of State of Punjab and others v. Rafiq Masih (White Washer) & others reported in (2015) 4 SCC 334, the relevant 18th paragraph of the Judgment is extracted here under:

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

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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."

The Hon'ble Apex Court in sub clause (i) of the paragraph 18 held that recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) are impermissible.

4. In view of the legal principles settled by the Hon'ble Apex Court of India, this Court is of the opinion that the respondent is at liberty to revise the scale of pay of the writ petitioner in accordance with the Rules and the Government Orders in force. However, the recovery imposed cannot be implemented and therefore, the recovery portion of the impugned order alone stands quashed. In respect of the revision, it stands as it is.

5. Accordingly, the respondent is directed not to effect the recovery on the writ petitioner and the writ petition stands partly allowed. However, there is no order as to costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To
The Commissioner,
Narasingapuram Municipality,
Athur Taluk, Salem District.

+ 1 cc to Mr. V. Jayaprakash Narayanan, Advocate SR.92085
+ 1 cc to Mr. P. I. Thirumoorthy, Advocate Sr.92296

W.P.Nos.29550 of 2013

(CS-IV)
EU (19/01/2018)

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