



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.04.2017

CORAM:

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) No.416 of 2017 &
C.M.P. (MD) .No.3825 of 2017

G.Rajakani ...Appellant/Petitioner
Vs.

1.The Principal Secretary to the Government,
Government of Tamilnadu,
Finance (Pay Cell) Department,
Fort St.George,
Chennai-9.

2.The Director of Municipal Administration
Chepakam,
Chennai-5.

3.The Director of Local Fund Audit,
Kurazhagam,
Chennai-108.

4.The Municipal Commissioner,
Virudhunagar Municipality,
Virudunagar.

...Respondents/ Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 03.01.2017, made in W.P.(MD).No.3746 of 2016.

Prayer in WP(MD)No.3746 of 2016:-

Writ of Certiorarified Mandamus calling for the records pertaining to the Impugned order passed by the 2nd respondent in proceedings Lr.RC.No.45529/F3/2010 dated 21.05.2015 and consequential impugned recovery order of the 4th respondent proceedings in Na.Ka.No.C1/12154/2012/dated 22.01.2016 and quash the same.

For Appellant : Mr.K.K.Samy

For Respondents : Mr.S.Chandrasekar for R1 to R3
Government Advocate
Mr.Muthu Geethayan for R4



JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM,J]

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Heard Mr.K.K.Samy, learned counsel for the appellant, Mr.S.Chandrasekar, learned Government Advocate for the respondents 1 to 3 and Mr.Muthu Geethayan, learned counsel for the fourth respondent.

2. This appeal is directed against the common order dated 03.01.2017, made in W.P.(MD).Nos.24353 and 3746 of 2016. One of the writ petitioners in W.P.(MD).No.3746 of 2016 is the appellant herein. The appellant is working in the fourth respondent Municipality as non technical unskilled worker. The fourth respondent Municipality revised scale of pay of the appellant vide order dated 22.11.2012 by referring to the proceedings of the Director of Municipal Administration, dated 21.05.2015 and consequently higher scale of pay was given and the monetary benefits also disbursed to the appellant and subsequently, when the matter was taken up for audit, it came to light that the Government Order which was the basis of the proceedings of the Director of Municipal Administration, dated 21.05.2015 does not extend the benefit of higher scale of pay to non technical unskilled worker. Thus, the respondent Municipality was left with no other option except to pass orders of recovery of excess amount paid. The appellant along with others challenged the proceedings of the Director of Municipal Administration, Chennai, dated 21.05.2015 as well as the order of recovery dated 22.01.2016.

3. The learned Single Judge heard the writ petition and taking note of the decision of the Hon'ble Supreme Court in a decision in Civil Appeal No.3500 of 2006 in the case of High Court of Punjab and Harayana and others Vs. Jagdev Singh, held that the excess payment given to the petitioner can be recovered as he had furnished an undertaking that if money has been paid by mistake the same shall be recovered while opting for revised scale of pay and thus, the petitioner should also bind the undertaking.

4. On a perusal of the order dated 22.11.2012, passed by the fourth respondent Municipality, it is evidently clear that the revised scale of pay was implemented in respect of the appellant with a specific condition that in the event of there is any objection by the Audit, appropriate orders would be passed for recovery and the appellant has also executed undertaking on Rs.20/- non judicial stamp paper fully being aware of the fact that in the event of any audit objection, then he has to repay the amount to the Municipality.



5. The learned counsel for the appellant would contend that the appellant is working in the Class IV category post, and the orders of recovery passed against him is very harsh and he will put to irreparable loss.

6. In the light of the legal position as laid down by the Hon'ble Supreme Court in the afore-mentioned case, we can only sympathise with the appellant, but cannot grant any relief as the implementation of revised scale of pay is subject to audit approving the same. The appellant was also aware of the same and he has also given an undertaking on non judicial stamp paper. At this distant of time, the appellant cannot plead here that opportunity of hearing was not granted and he has not been put on notice. There is no valid ground to interfere with the order passed in the writ petition. The writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal Secretary to the Government,
Government of Tamilnadu, Finance (Pay Cell) Department,
Fort St.George, Chennai-9.
- 2.The Director of Municipal Administration, Chepakkam,
Chennai-5.
- 3.The Director of Local Fund Audit, Kurazhagam, Chennai-108.
- 4.The Municipal Commissioner,
Virudhunagar Municipality, Virudunagar.

+One cc to The Special Government Pleader, SR.No.53087

+One cc to Mr.M.Muthugeethayan, Advocate, SR.No.52736

+One cc to Mr.K.K.Samy, Advocate, SR.No.53049

jikr

RL/8C/3P/KKR/SAR1/6.6.2017

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