

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 06.07.2017****CORAM:****THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN****AND****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.A. [MD] .No.800 of 2017****and****C.M.P. [MD] No.5622 of 2017**

WEB COPY

1. The Director of Local Fund Audit,
(Municipal Pension),
O/o. The Director of Local Fund Audit,
Kuralagam, 4th Floor,
Chennai - 108.

2. The Assistant Director of Local Fund Audit,
(Municipal Pension),
O/o. The Director of Local Fund Audit,
Kuralagam, 4th Floor,
Chennai - 108.

... Appellants

Vs.

1. M.Shahul

2. The Commissioner,
Bodinayakkanur Municipality,
Bodinayakkanur, Theni District.

3. The Principal Accountant General (A&E),
O/o. The Principal Accountant General (A&E)
Chennai 600 018.

... Respondents

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, to allow the writ appeal by setting aside the order, dated 20.01.2016 made in W.P.(MD).No.1157 of 2016.

Prayer in WP(MD). 1157/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings O.Mu.No.13099/ Naocha (2) /2014 dt.15.05.2014 confirming the order passed by the 3rd respondent in his proceedings O.M.No.10063/Naocha(2) 2014 dt.11.04.2014 confirming the order of the 3rd respondent in his proceedings in Moo.Mu.No.260/Naocha(2)/2014 dt.06.01.2014 and quash the same as illegal and consequentially to direct the respondents to refund the recovered amount of the petitioner from his DCRG along with the accrued interest thereon within the period that may be stipulated by this Hon'ble Court.



For Appellants
For Respondents

: Mr.T.S.Mohamed Mohideen, AGP
: Mr.M.Mohamed Imran
for M/s.Ajmal Associates

JUDGMENT

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

The Director of Local Fund Audit is on appeal against the order dated 20.01.2016, allowing the writ petition WP(MD)No.1157 of 2016, filed by the first respondent herein.

2.The first respondent herein was working as Chainman in the second respondent municipality. He was given special compensatory allowance of 5% with effect from 01.08.1992. The first respondent/writ petitioner reached the age of superannuation on 28.02.2009. When the proposal for terminal benefits was submitted, an objection relating to payment of special compensatory allowance was taken and as a result, the third respondent herein withheld a sum of Rs.52,234/- (Rupees fifty two thousand two hundred and thirty four only), on the ground that the first respondent/writ petitioner was not entitled to special compensatory allowance. The second appellant herein took the stand that such special compensatory allowance was payable only to Office Assistants and not to Chainman. Since the second appellant herein vide order dated 15.05.2014, took the stand that the first respondent/writ petitioner was not entitled to such allowance, WP (MD)No.1157 of 2016 came to be filed.

3.The learned single Judge noted that such allowance was paid to the first respondent/writ petitioner from 1992 onwards. There was no misrepresentation on the part of the first respondent/writ petitioner. Therefore, withholding the disbursement of sum of Rs.52,234/- (Rupees fifty two thousand two hundred and thirty four only) from the terminal benefits payable to the first respondent/writ petitioner actually amounted to illegal recovery. There was absolutely no fault on the part of the writ petitioner. Therefore, the learned single Judge rightly allowed the writ petition with direction to disburse the withheld amount of Rs.52,234/- (Rupees fifty two thousand two hundred and thirty four only).

4.We find no merit in this writ appeal. Accordingly, this writ appeal is dismissed. No costs. Consequently connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)



To

1. The Director of Local Fund Audit,
(Municipal Pension),
O/o. The Director of Local Fund Audit,
Kuralagam, 4th Floor,
Chennai - 108.

2. The Assistant Director of Local Fund Audit,
(Municipal Pension),
O/o. The Director of Local Fund Audit,
Kuralagam, 4th Floor,
Chennai - 108.

+1cc to M/s.Ajmal Associates, Sr.No.63742
+1cc to Spl.Government Pleader Sr.No.64444

GK

VB/MR/KKR/SAR4/20.07.2017/3P/5C

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and
C.M.P. [MD] No.5622 of 2017

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