



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.01.2017
CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
W.P. (MD) Nos.24353 and 3746 of 2016
and
W.M.P (MD) Nos.17587,3368,11701 of 2016

WEB COPY

W.P. (MD) No.24353 of 2016

J.Muthiah

... Petitioner

Vs.

- 1.The Assistant Director of Local Fund Audit,
Nachi Street,
Virudhunagar - 626 001
Virudhunagar District.
- 2.The Commissioner,
Virudhunagar Municipality,
Virudhunagar - 626 001,
Virudhunagar District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the records of the second respondent I.e., the Commissioner of Municipality, Virudhunagar relating to Na.Ka.No.C1/12154/2012, dated 25.10.2016 and to quash the same and consequently to order refund of the amount already recovered from the pay of the Petitioner from the month of October 2016.

For Petitioner : M/s.S.Visvalingam
For Respondent-1 : Mr.M.Satish Kumar
Addl.Govt.Pleader

W.P. (MD) No.3746 of 2016

- 1.G.Rajakani
- 2.M.Soumdirarajan
- 3.G.Pal Muniyandi
- 4.S.Muniyandi
- 5.S.Nagendran
- 6.K.Mariyappan
- 7.S.Marikani
- 8.K.Amirthakani
- 9.M.Kanesan
- 10.K.Innasimuthu
- 11.L.Anthony Selvam
- 12.K.ThangaMarakamalai
- 13.V.Pitambaram
- 14.P.Sekar
- 15.P.Periyasamy
- 16.K.Andavar Raj
- 17.A.Vairavan



18.T.Arumugam
19.G.Gurunathan
20.K.Mani
21.K.Mariappan
22.J.Selvin
23.P.Ramar
24.M.Perumal
25.S.Balasubramani

... Petitioners

Vs.

- 1.The Principal Secretary to the Government,
Government of Tamil Nadu,
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,
Virudhunagar.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records pertaining to the impugned order passed by the second respondent in his proceedings in Lr.RC.No.45529/F3/2010, dated 21.5.2015 and consequential impugned recovery order of the fourth respondent proceedings in Na.Ka.No.C1/12154/2012, dated 22.01.2016 and to quash the same.

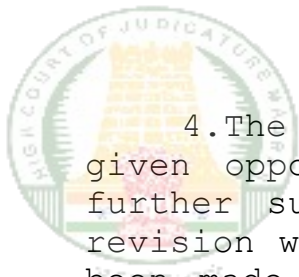
For Petitioners : M/s.K.K.Samy
For Respondents : Mr.M.Satish Kumar
1 to 3 Addl.Govt.Pleader
For Respondent-4 : M/s.M.Muthugeethaiyan

COMMON O R D E R

W.P(MD)No.24353 of 2016 has been filed for issuance of a writ of Certiorarified Mandamus calling for the records of the second respondent I.e., the Commissioner of Municipality, Virudhunagar relating to Na.Ka.No.C1/12154/2012, dated 25.10.2016 and to quash the same and consequently to order refund of the amount already recovered from the pay of the Petitioner from the month of October 2016.

2.W.P(MD)No.3746 of 2016 has been filed for issuance of a writ of Certiorari calling for the records pertaining to the impugned order passed by the second respondent in his proceedings in Lr.RC.No.45529/F3/2010, dated 21.5.2015 and consequential impugned recovery order of the fourth respondent proceedings in Na.Ka.No.C1/12154/2012, dated 22.01.2016 and to quash the same.

3.Heard the learned counsel on either side.



4.The grievance of the Petitioners is that they have not been given opportunity before passing of the impugned orders. It is further submitted that the Petitioners were not aware when the revision was effected. It was further stated that the revision has been made which is subject to audit objection, for which, while accepting the orders, the Petitioners have given consent for recovery of money from them. When recovery has been ordered, now the Petitioners have contended that without giving opportunity to them, the impugned orders have been passed. Hence these Writ Petitions have been filed for the relief stated supra.

5.The Honourable Apex Court in a decision in **Civil Appeal No.3500 of 2006 in the case of High Court of Punjab and Haryana and others .vs. Jagdev Singh**, wherein, it has been held that if there is any erroneous fixation and that consent is given by the employers for recovery and that they are aware of the revision, then the employers are bound to pay the amount and now the Corporation has made order for recovery of the amount Hence the Employer is entitled to recover the same from the employers concerned. The relevant portion of the aforesaid judgement in Para 10 and 11 reads as follows:

'10.In State of Punjab and others .vs. Rafiq Masih(White Washer)etc. This Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.

11.The principle enunciated in proposition(ii) above cannot apply to situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made excess would be required to be refunded. The Officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.'

6.The Contention of the learned counsel for the Petitioners that there is violation of principles of natural justice cannot be accepted in the facts of this case.

7.It has been categorically stated in the counter that these employees have given undertaking that if money has been paid by



mistake, the same shall be repaid or recovered as mentioned in Para Nos.16,20 and 22 of the counter filed by the fourth respondent. Suppressing the undertaking given by them, the Petitioners have come forward with these Writ Petitions, which is un-sustainable in law.

8. Already this Court has disposed of similar Writ Petitions in W.P(MD) Nos.24134 and 24135 of 2016, dated 20.12.2016. Following the same, these Writ Petitions stands dismissed. Since the Writ Petitions are dismissed, subsequent revision to be made pursuant to the 6th/7th Pay Commission can be proceeded with. Consequently, connected Miscellaneous Petitions are dismissed. No costs.

Sd/-

Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

To:

- 1.The Assistant Director of Local Fund Audit,
Nachi Street,
Virudhunagar - 626 001
Virudhunagar District.
 - 2.The Commissioner,
Virudhunagar Municipality,
Virudhunagar - 626 001,
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 - 3.The Principal Secretary to the Government,
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 - 4.The Director of Municipal Administration,
Chepakkam, Chennai-5.
 - 5.The Director of Local Fund Audit,
Kurazhagam,
Chennai-108.
 - 6.The Municipal Commissioner,
Virudhunagar Municipality,
Virudhunagar.
- +1 cc to MR.M.MUTHUGEETHAYAN, ADVOCATE, SR NO: 242.
+1 cc to MR.S.VISVALINGAM,ADVOCATE, SR NO: 414.
+1 cc to MR.M.MUTHUGEETHAYAN, ADVOCATE, SR NO: 241.
+1 cc to MR.K.K.SAMY, ADVOCATE, SR NO: 614.

vsn

sva/msk/ttn/23.01.2017/4p/11c