

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.6229 of 2018 and

WMP.Nos.7710 and 7711 of 2018

S.Nallasamy

... Petitioner

Vs

1. The Government of Tamil Nadu
rep. by its Commissioner for Municipal
Administration and Water Supply
Department, Fort St. George,
Chennai-9.
 2. The Commissioner,
Bhavani Municipality,
Bhavani, Erode District.
 3. The Director of Local Fund Audit,
Erode, Erode District.
- Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.No.1623/2017/C1 dated 20.11.2017 on the file of the 2nd respondent and quash the same and consequently, direct the respondents to restore the petitioner's scale of pay at Rs.5200-20200+1900 and continue to pay the same in the present post and also to refund the recovered amount of Rs.31,825/- from the petitioner's salary for the month of November, 2017.

For Petitioner

:Mr.R.Neelakandan
M/s.P.Rajavel

For Respondents

:Mr.V.Kadhirvelu,
Special Government Pleader
for R1 and R3

Mr.T.M.Pappiah,
Standing Counsel for R2

O R D E R

This Writ Petition is directed against the impugned order passed against the petitioner dated 20.11.2017 by the 2nd respondent with a direction to recover Rs.2,29,148/- from his salary in 36 equal monthly instalments, without issuing any prior notice calling for explanation whatsoever for such recovery.

2. Heard the learned Counsel for the petitioner and Mr.V.Kadhirvelu, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.T.M.Pappiah, learned Standing Counsel for the 2nd respondent.

3. A perusal of the impugned order clearly shows that there is no notice whatsoever calling upon the petitioner as to why the said amount of Rs.2,29,148/- should not be recovered from his salary in 36 monthly instalments has been served on the petitioner. In similar circumstances in W.P.No.31170/2017, this Court, while allowing the writ petition by order dated 30.11.2017 has held that no order of recovery can be passed without issuing prior notice calling for explanation. It is relevant to extract paragraph 5 of the said order here under:

'5. Since the impugned order challenged in this writ petition was passed behind the back of the petitioner without even issuing any notice violating the principles of natural justice, following the order passed by this Court in similar writ petitions referred to above, the impugned order is quashed and the writ petition stands allowed. Needless to mention that if any amount pursuant to the impugned order has been recovered, the same shall be paid back to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Consequently, W.M.P.Nos.34213 & 34214 of 2017 are closed. No costs.'

4. The learned Special Government Pleader appearing for the respondents 1 and 3 also after going through the impugned order agreed with the submission made by the learned Counsel for the petitioner that no notice was issued before issuing the recovery order that the petitioner is entitled to get notice before passing the order of recovery.

5. In that view of the matter, the impugned order dated 20.11.2017 of the 2nd respondent, which was passed behind the back, violating the principles of natural justice is quashed and the Writ Petition stands allowed. It is needless to mention that if any amount is recovered pursuant to the impugned order, the same shall be paid back to the petitioner, within a period

of eight weeks from the date of receipt of a copy of this Order. At the same time, the impugned order shall be treated as a Show cause Notice and the petitioner is given 3 weeks time to submit his explanation and on receipt of the same, the Commissioner, Bhavani Municipality, Bhavani, Erode District, the 2nd respondent herein, is directed to consider the same and pass a speaking order in respect of re-fixation and recovery. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Commissioner for Municipal
Administration and Water Supply
Department,
Government of Tamil Nadu
Fort St. George,
Chennai-9.

2. The Commissioner,
Bhavani Municipality,
Bhavani, Erode District.

3. The Director of Local Fund Audit,
Erode, Erode District.

+1cc to the Governemnt Pleader SR.No.21433

+1cc to Mr.P.Rajavel Advocate SR.No.21029

W.P.No.6229 of 2018

SDR 09.04.2018

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