

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14531 of 2016

in

W.M.P.Nos.12687 & 12688 of 2016

K.Ravichandran

.. Petitioner

vs

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Chennai - 600 009.
 2. The Director of Municipal Administration,
Chepauk, Chennai - 600 005.
 3. The Director of Town Panchayat,
Kuralagam, Chennai - 600 108.
 4. The Executive Officer,
Kunrathur Town Panchayat,
Kancheepuram District.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the 4th respondent in his Pro.Na.Ka.No.1/2016/A1 dated 17.02.2016 and quash the same.

For Petitioner : Mr.A.Baskaran

For Respondents : Mrs.A.Srijayanthy

Special Government Pleader for R1 to R3

Mr.R.Rajendra Narasimhan for R4

O R D E R

The order of recovery dated 17.02.2016 issued by the 4th respondent is under challenge in the present writ petition.

2. The writ petitioner was initially appointed as a daily wage employee and thereafter, brought under the consolidated pay. Subsequently, the service of the writ petitioner was regularized and he was absorbed in the regular establishment.

3. The grievances of the writ petitioner is that the order of recovery was issued without issuing any notice to the writ petitioner and the recovery was issued in respect of the audit objections raised regarding the excess payment.

4. The learned Special Government Pleader appearing on behalf of the respondents states that the order of recovery was issued in view of the fact that the proceedings of the Commissioner Municipality dated 21.05.2015 was cancelled. Therefore, there was no irregularity and excess payment already paid to the writ petitioner was sought to be regularised. This Court is of an opinion that the writ petitioner is employed in Group IV post. This apart, the impugned order of recovery was issued without any show cause notice and opportunity to the writ petitioner. Thus, the legal principles settled in this regard by the Apex Court in the case of State of Punjab and Others Vs. Rafiq Masih reported in 2015 (4) SCC 334, would be applicable.

5. This Court already decided the similar issue in WP Nos.17880 to 17888 of 2016 dated 13.08.2018 and the relevant paragraphs are extracted hereunder:

6. However, the learned Special Government Pleader appearing on behalf of the respondents is unable to dispute the fact that the impugned order of recovery has been issued after issuing a show cause notice and providing an opportunity to the writ petitioners. Thus, the impugned order of recovery is in violation of the principles of natural justice. This apart, the fixation of pay and salary has been paid by the Establishment of the 3rd respondent and the writ petitioners cannot be held responsible for erroneous fixation of pay or the excess payment. The writ petitioners are serving as Group IV Employees and therefore, the recovery of excess salary if any, cannot be done in view of the legal principles settled by the Hon'ble Supreme Court of India in the case of State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334]. The Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgement, which is extracted hereunder:

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

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

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

(iii) Recovery from the 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."

7. In view of the legal principles settled by the Apex Court in this regard, the excess amount if any paid cannot be recovered from the writ petitioner. However, the arrears or mistakes in the fixation of pay, can be corrected as per the Audit objections. Thus, the fixation of pay can be corrected as per the Government orders and pay rules in force. However, the excess payment already paid to the writ petitioners cannot be recovered and if any amount has already recovered, the same is to be reimbursed to the writ petitioner.

8. In view of the above, the impugned recovery order issued in proceedings dated 17.02.2016 by the 4th respondent is quashed. The amount, if any, already recovered from the petitioner is directed to be reimbursed within a period of twelve (12) weeks from the date of receipt of a copy of

this order. Accordingly, the present writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

sk/pns

To

- 1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Chennai - 600 009.
2. The Director of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Director of Town Panchayat,
Kuralagam, Chennai - 600 108.
4. The Executive Officer,
Kunrathur Town Panchayat,
Kancheepuram District.

+1cc to Mr.A.Baskaran , Advocate SR.No. 73964

+1 CC TO GOVERNMENT PLEADER SR.NO. 74391

W.P.No.14531 of 2016

ASK(03/12/2018)

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