

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2018
Coram

The Hon'ble Mr. Justice Satrugana Pujahari

Writ Petition No.30997 of 2017
and
W.M.P.No.33957 of 2017

P. Raju

...Petitioner

Vs.

1. The Government of Tamil Nadu,
rep. by its Commissioner of Municipal Administration
and Water Supply Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner,
Erode City Municipal Corporation,
Erode- 638 001.

3. The Deputy Director of Local Fund Audit,
O/o. Erode City Municipal Corporation,
Erode.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records pertaining to the impugned order in Na.Ka.No.P4/1816/2017, dated 18.04.2017 on the file of the second respondent and based on audit objection of the third respondent vide Ni.Mu.No.131/A2/2017 dated 03.04.2017 and to quash the same as illegal and to direct the second and third respondents to reimburse Rs.1,61,798, illegally recovered from the pension benefits of the petitioner with interest at the rate of 18% from the date of the impugned proceedings till the date of payment of entire gratuity amount.

For Petitioner : Mr.R. Neelakandan for
M/s. P.Rajavel

For Respondents 1 and 3 : Mr.V.Kadhirvelu
Special Government Pleader

For Respondent-2 : Mr. M.Rajamathivanan

O R D E R

Heard Mr.R.Neelakandan, the learned counsel representing M/s.P.Rajavel, the learned counsel for the petitioner, Mr.V.Kadhirvelu, the learned Special Government Pleader appearing for the first and third respondents and Mr.M.Rajamathivanan, the learned counsel appearing on behalf of the second respondent.

2. The grievance of the petitioner, in this Writ Petition is that, while he was working as a Labourer in the respondent/Municipality, his salary was revised, and accordingly, he was granted in the time scale of pay of Rs.5200-20200 with a Grade Pay of Rs.2400 by re-designating the post as 'Unskilled' from (Class D) other trade posts and the monetary benefits based on the said scale of pay was ordered to be given with effect from 01.08.2010. The petitioner continued to receive the same till the date of his retirement. However, soon after his retirement, based on an audit objection, as revealed from the averments made in the Writ Petition, his scale of pay was held to have been illegally fixed, though he was entitled to the scale of pay of Rs.4800-10000 with a Grade Pay of Rs.1650 from 01.01.2006 upto the date of his retirement. Accordingly, an order of recovery was made for Rs.1,61,798, with regard to the payment made to the petitioner, and consequently, the aforesaid amount was deducted from his retiral benefits. The petitioner came to challenge the same to be illegal and arbitrary on the ground that, without hearing him, such an order could not have been passed, and as such, he claimed for refund of the aforesaid amount recovered from him with interest at the rate of 18% from the date of recovery.

3. Counter affidavit has been filed by the learned counsel appearing for the second respondent indicating that the petitioner was not legally entitled to the scale, as fixed, inasmuch as, he was working as unskilled labourer, and as such, the scale permissible to him was Rs.4,800/-10000+1650 w.e.f. 01.01.2006. i.e., when the VI Pay Commission report came into existence. However, his time scale of pay on the scale of Rs.5200-20200 with Grade Pay Rs.2400 was erroneously fixed and the payment was made to the petitioner till the date of the retirement. When the same came to the knowledge of the authority in audit objection, recovery has been ordered. It has never been the case of the petitioner that he was entitled to the aforesaid higher time scale. So he having received monetary benefits, to which, he was not entitled, recovery of the amount as such can never be said to be illegal and arbitrary and as such, this Writ Petition filed challenging such order of recovery is liable to be dismissed.

4. The learned counsel appearing for the petitioner does not dispute the fact that the scale of pay, which has been pointed out to be the entitlement of the petitioner and he drew an higher pay as pointed in the audit was illegal or arbitrary, in any manner. So also, he never says that his pension has been fixed in an in-appropriate manner, reducing his scale. But, he now confines his prayer with regard to recovery made of the excess payment with the submission that, since the petitioner has no contribution in getting the higher scale payment in any manner, as he is a Class -IV employee, and as per the law laid down by the Hon'ble Supreme Court, in re State of Punjab and others Vs. Rafiq Masih and others reported in [(2015) 4 S.C.C. 334], recovery being impermissible, he is entitled to the refund of the same with interest. In this regard, the learned counsel has drawn the attention of the Court to para No.18 of the decision, which is reproduced hereinbelow:-

" It is not possible to postulate all situations of hardship which would govern employees on the issue of recover, 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, or 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."

5. Thus, placing heavy reliance on the aforesaid decision, the learned counsel for the petitioner submits that recovery is impermissible in law, as such, the respondents be directed to refund the sum with interest at 18%. The learned counsel for the respondents however, submits that, since the petitioner is not entitled to the same and immediately, after the audit objection, it was directed to be recovered from the petitioner, and the same having already been recovered from the petitioner, the aforesaid law laid down by the Hon'ble Apex Court is of no assistance to the petitioner.

6. After hearing the learned counsel appearing for the parties and going through the materials placed on record, especially, the proposition of law, as laid down by the Hon'ble Apex Court in the aforesaid decision, admittedly, it being the case of the respondents that, the petitioner contributed in no manner, in getting higher payment than his entitlement, I am of the view that, the order of recovery of the excess salary paid to the petitioner, to which, he was not legally entitled to, that too, after his retirement, is impermissible, more particularly, when he is Class IV employee. In such premises, I am of the view that order of recovery is unsustainable and accordingly, liable to be quashed and as such, the same stands quashed and the recovery already made be refunded to the petitioner within eight weeks from today. However, regard being had to the facts and situation, this Court is of the view that, the petitioner is not entitled to the interest on such refund.

7. With the aforesaid order, this Writ Petition stand allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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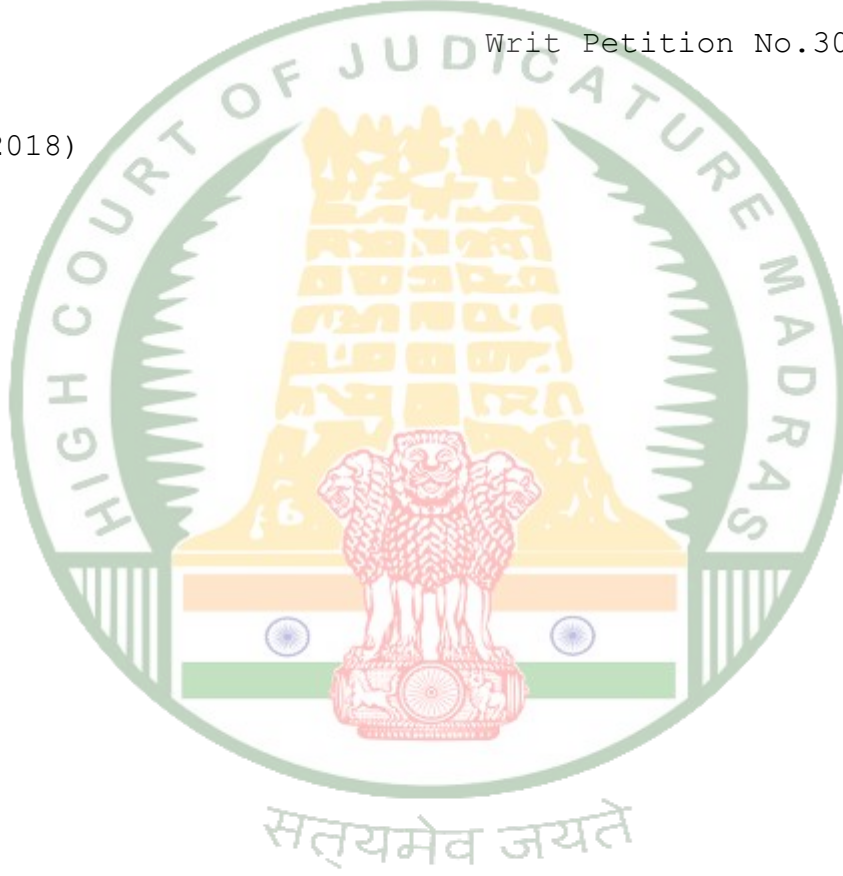
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Erode.

+1cc to Mr.M.RAJAMATHIVANAN, Advocate, S.R.No.43844
+1cc to Mr.P.RAJAVEL, Advocate, S.R.No.43845

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TR(19/07/2018)



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