

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.08.2018

CORAM

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

W.P.Nos.17880 to 17888 of 2016
and
W.M.P.No.15574 to 15582 of 2016
and
W.M.P.Nos.15370 to 15378 of 2017

A.SANTHOSHAM ... PETITIONER in WP No.17880 of 2016
S.RAMESH ... PETITIONER in WP No.17881 of 2016
V.ANUSUYA ... PETITIONER in WP No.17882 of 2016
C.LOGANATHAN ... PETITIONER in WP No.17883 of 2016
S.THIYAGU ... PETITIONER in WP No.17884 of 2016
J.MADURAIVEERAN ... PETITIONER in WP No.17885 of 2016
D.MOHAN ... PETITIONER in WP No.17886 of 2016
C.SHANTHI ... PETITIONER in WP No.17887 of 2016
M.GOPINATH ... PETITIONER in WP No.17888 of 2016

- 1.THE SECRETARY TO GOVERNMENT,
MUNICIPAL ADMINISTRATION AND WATER SUPPLY
DEPARTMENT, FORT ST.GEORGE, CHENNAI - 9.
- 2.THE DIRECTOR OF MUNICIPAL ADMINISTRATION,
CHEPAUK, CHENNAI - 5.
- 3.THE COMMISSIONER,
VANDAVASI MUNICIPALITY,
THIRUVANNAMALAI DISTRICT.

..RESPONDENT IN ALL WPS

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 3rd respondent in his
Pro.Na.Ka.No.B1/663/2016, Pro.Na.Ka.No.H1/663/2016,
Pro.Na.Ka.No.H1/683/2016, Pro.Na.Ka.No.H1/683/2016,

Pro.Na.Ka.No.H1/683/2016,
Pro.Na.Ka.No.H1/663/2016,
Pro.Na.Ka.No.B1/683/2016 respectively dated 20.04.2016 and
quash the same.

For Petitioners : Mr.A.Baskaran(in all W.Ps)

For Respondents : M/s.A.Srijayanthi, Spl GP
(in all W.Ps)

C O M M O N O R D E R

The order of recovery issued against the writ petitioners in respect of payment of excess amount of salary in proceedings dated 20.04.2016 is under challenge in these writ petitions.

2.The writ petitioners were appointed as Daily Wages N.M.R. in Vandavasi Municipality on consolidated pay and subsequently, brought under the regular establishment in various posts like Sweeper, Water Supply Assistant, Driver, and Sanitary Worker.

3.The grievance of the writ petitioners are that the salary as applicable has been paid to them as per the Government orders in force by the respondents. There is no misrepresentation or otherwise on the part of the writ petitioners and the writ petitioners being Clause IV employees, are incompetent to deal with the Establishment affairs of the respondents. Thus, the salary was paid as per the fixation done by the 3rd respondent/the Commissioner, Vandavasi Municipality.

4.This being the factum of the case, the impugned order of recovery has been passed in proceedings dated 20.04.2016, stating that an excess amount of salary had been paid to the writ petitioners on account of wrong fixation and the same are to be recovered from all the petitioners. The order of recovery has been issued based on the Audit objections raised by the Audit policy.

5.The learned Special Government Pleader appearing on behalf of the respondents opposed the contention by stating that based on the wrong fixation done by the Establishment of the 3rd respondent Municipality, the writ petitioners had received excess payment of salary and therefore, there is no error in recovering the excess payment already made. The Audit objections

states that the fixation itself was wrong and therefore, the excess amount paid to the writ petitioners must be recovered. Based on the Audit objections, the impugned order of recovery has been passed.

6.The office of the 3rd respondent had fixed the scale of pay and paid the salary. This Court is of an opinion that if there is any irregularity or illegality in respect of fixation of pay and disbursement of excess payment of salary, then the officials, who are responsible for such wrong fixation and excess payment to be prosecuted and suitable actions shall be taken to recover the said amount from them. Contrarily, the excess amount cannot be recovered from the writ petitioners, who all are not responsible for any payment of excess salary.

7.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."

8. 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.

9. Accordingly, the impugned order passed by the 3rd respondent in proceedings dated 20.04.2016 is quashed. Thus, all the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kak

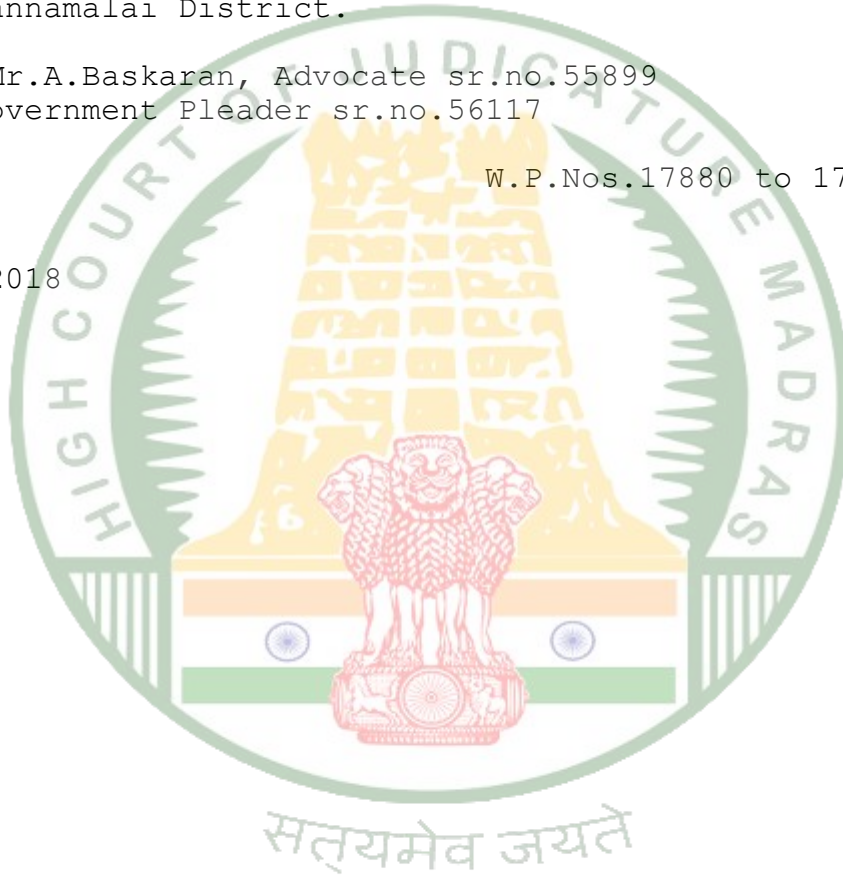
To

- 1.The Secretary to Government,
Municipal Administration and Water Supply
Department, Fort St.George, Chennai - 9.
- 2.The Director of Municipal Administration,
Chepauk, Chennai - 5.
- 3.The Commissioner,
Vandavasi Municipality,
Thiruvannamalai District.

+9cc to Mr.A.Baskaran, Advocate sr.no.55899
+1cc to Government Pleader sr.no.56117

W.P.Nos.17880 to 17888 of 2016

ak(co)
nr 05/09/2018



WEB COPY