



WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 27.03.2018**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P. (MD) Nos.1042 to 1044 of 2018**

**and**

**W.M.P. (MD) No.1081 to 1083 of 2018**

- 1.A.Radhakrishnan ... Petitioner in W.P.No.1042 of 2018  
2.V.Rengaraj ... Petitioner in W.P.No.1043 of 2018  
3.M.Ganesan .. Petitioner in W.P.No.1044 of 2018

**Vs.**

1. The State Government of Tamil Nadu,  
rep by its Secretary,  
Municipal Administration and Water Supply Department,  
Fort St.George, Chennai-600 009.  
2. The Director of Town Panchayat,  
Kuralagam, Chennai-600 108.  
3. Puliur Town Panchayat,  
Rep by its Executive Officer,  
Karur District, Karur. ...Respondents in all W.Ps.

**Common Prayer** : Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned order in Na.Ka.No.42/2017 dated 29.12.2017 passed by the third respondent and quash the same.

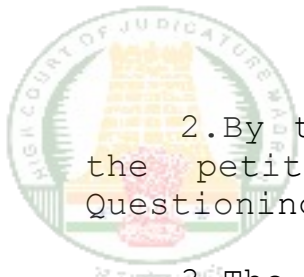
For Petitioner : Mr.T.Antony Arul Raj  
(in all W.Ps.)

For R1 & R2 : Mr.K.Saravanan, G.A.  
(in all W.Ps.)

For R3 : Mr.M.Murugan  
(in all W.Ps.)

**COMMON ORDER**

The writ petitioners in W.P.(MD)Nos.1042 & 1044 of 2018 are working as Over-Head Time Watchmen and the petitioner in W.P.(MD) No.1043 of 2018 is working as Drinking Water Project Water Man in the third respondent Panchayat.



2.By the order impugned in these writ petitions, the pay of the petitioners were re-fixed and recoveries were ordered. Questioning the same, these Writ petitions have been filed.

3.The learned standing counsel appearing for the third respondent filed his counter affidavit. In Paragraph No.10 of the counter affidavit it is averred as under:

*"The pay of the petitioner is rationalized from Rs.4800 - 10,000+1300 G.P. to the enhanced time scale of pay of Rs.5200 - 20200+GP2400 with monetary effect date from 01.08.2010. Due to change in the monetary effect date from 01.07.2007 to 01.08.2010 of the enhanced time scale of pay, the excess amount received by the petitioner has to be recovered from the petitioner and hence the order is well with the ambit of law".*

4.However, as rightly pointed out by the learned counsel for the petitioner, the Hon'ble Supreme Court in the decision reported in 2015 4 SSC page 334 State of Punjab and Others Vs. Rafiq Masih held that if recovery would cause undue hardship, recovery will become impermissible. Recovery from the employees in class 3 and 4 services was held to be impermissible where the employee was not at fault. In this case the writ petitioners were absolutely not at fault.

5.The said decision was followed in a similar case in W.P.(MD) No.14230 of 2011 dated 01.02.2018 by this Court. In the present case also the order reducing the scale of pay as well as the recovery was imposed without issuing any show cause notice and also an opportunity of hearing.

6.Following the aforesaid decision, this Court holds that it is open to the respondents to re-fix the scale of pay, after due notice to the writ petitioners. However, in any event no amount can be recovered from the writ petitioners as they belong to last grade in service.

7.The orders impugned in these writ petitions stands quashed. Accordingly, the Writ Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar



To

1. The Secretary,  
Municipal Administration and Water Supply Department,  
Fort St.George, Chennai-600 009.

2. The Director of Town Panchayat,  
Kuralagam, Chennai-600 108.

3. The Executive Officer,  
Puliyur Town Panchayat,  
Karur District, Karur.

+3cc to Mr.T.Antony Arul Raj, Advocate Sr.No.59167 to 59169  
+1cc to Spl.Government Pleader Sr.No.59320 ,59038

GNS

VB/SKN/RSK/SAR1/31.05.2018/3P/8C

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