

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.13466 & 23736 of 2016

1. R.Nagarajan ... Petitioner (in both WPs)

Vs.

1. The Commissioner,  
Corporation of Chennai,  
Rippon Building, Chennai - 600 003.

2. The Assistant Commissioner,  
Zone-1, Corporation of Chennai,  
Thiruvottiyur, Chennai-19.

... Respondents in WP.No.13466/16

3. The Zonal Officer,  
Zone-1,  
Corporation of Chennai,  
Thiruvottiyur, Chennai-19. ... Respondent in WP.No.23736/16

Prayer in WP.No.13466/16: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Mandamus, directing the 1st respondent to settle the petitioner's terminal benefits and pension from the date of his superannuation i.e. 31.01.2015 till date by considering the petitioner's representation dated 05.08.0015.

Prayer in WP.No.23736/16: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records pertaining to order bearing No.M.A1/Na.Ka.No.0445/2015/AR dated 02.06.2015 of the 2nd respondent to recovery of the amount of Rs.2,61,737/- from pension and quash the same and consequently direct the 1st respondent to settle petitioner's terminal benefits and pension from the date of petitioner's superannuation i.e. 31.01.2015 without any recovery from petitioner's pension.

For Petitioner : Mr.R.Ramesh (in both WPs)

For Respondents: Mr.G.Anantharangan  
(for R1 & R2)  
(in both WPs)

## COMMON ORDER

This writ petition is filed for Writ of Mandamus directing the Commissioner, Corporation of Chennai, to settle the petitioner's terminal benefits and pension from the date of his superannuation i.e. 31.01.2015 till date by considering the petitioner's representation dated 05.08.0015.

2. The short facts are that the petitioner was appointed as Revenue Assistant on 09.07.1990. The petitioner was granted Special Grade after completion of 10 years of service and selection grade on completion of 20 years of service. He reached superannuation on 31.01.2015. After attaining superannuation, the petitioner was served with the order dated 02.05.2015 from the respondent corporation, ordering to recover an amount of Rs.2,61,717/- from the terminal benefits.

3. The learned counsel for the petitioner states that the post of Revenue Assistant is a Group-C post and there could not be any order of recovery of money after retirement as mandatory by the Hon'ble Supreme Court of India in the case of State Of Punjab & Ors vs Rafiq Masih reported in 2015 4 SCC 334, the relevant paragraph No.18 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 herein above, 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."

The learned counsel for the petitioner states that the above judgment would cover the facts of the case.

4. In view of the above, the writ petitions are allowed. Consequently the respondents are directed to pay back the amount already recovered from the petitioner within a period of 12 weeks from the date of receipt of a copy of this order. No Costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Pkn.  
To

1. The Commissioner,  
Corporation of Chennai,  
Rippon Building, Chennai - 600 003.

2. The Assistant Commissioner,  
Zone-1, Corporation of Chennai,  
Thiruvottiyur, Chennai-19.

3. The Zonal Officer,  
Zone-1,  
Corporation of Chennai,  
Thiruvottiyur, Chennai-19.

W.P.Nos.13466 & 23736 of 2016

ln[col  
srg 21/11/2019

WEB COPY