

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.02.2019

CORAM

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

W.P.Nos.7115 & 7116 of 2018

and

W.M.P.Nos.8811 & 8812 of 2018

R.Murugan

.. Petitioner
in W.P.No.7115/2018

M.Velumurugan

.. Petitioner
in W.P.No.7116/2018

vs.

The Executive Officer,
Veerakkalpudur Selection Grade Town Panchayat,
Veerakkalpudur, Salem District. .. Respondent
in both petitions

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certioratified Mandamus, calling for the records relating to the proceedings of the respondent dated 12.02.2018 issued in Na.Ka.No.01/2018 and quash the same and consequently to restore pay to the petitioner as per the proceedings of the respondent dated 28.03.2013 issued in Na.Ka.No.160 of 2012 by refunding the already recovered amount from the petitioner if any till the restoration.

For Petitioner : Mr.P.I.Thirumoorthy
in both petitions

For Respondent : No appearance
in both petitions

C O M M O N O R D E R

The order of recovery dated 12.02.2018, issued by the respondent is under challenge in the present writ petition.

2. The writ petitioner was regularly appointed to the sanctioned post of Street Light Electrician by the respondent on 25.05.2001. The salary was admittedly fixed by the second respondent with reference to the Rules in force. However, based on the audit objections, the

impugned order of recovery has been passed, stating that excess payment was made to the writ petitioner, over and above the eligibility and accordingly, the excess amount is sought to be recovered. Challenging the said order, present writ petition is filed.

3. The learned counsel for the writ petitioner states that no notice or opportunity was provided to the writ petitioner before issuing the impugned order of recovery. Thus the order is in violation of the principles of natural justice. This apart, there is no misrepresentation or otherwise, on the part of the writ petitioner at the time of fixation of pay.

4. Any order affecting the service rights of the employees shall be passed by the competent authorities only after providing an opportunity to the employees, who all are likely to be affected. Thus, a show cause notice to the employee concerned is mandatory and violation of the issuance of any such show cause notice or opportunity amounts to violation of the principles of natural justice.

5. This apart, the mistake that had occurred in the fixation of pay can be rectified by the competent authority at any time. However, the excess payment already made cannot be recovered. The petitioner was working in the group "C" cadre. The said principle is well settled by the Honourable Supreme Court of India, in the case of the 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 Judgment, 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.

6. In view of the principles laid down by the Hon'ble Apex Court in the case cited supra, no recovery can be made even if an excess payment is made from the Group "D" employees. Accordingly the respondents are directed to rectify the errors occurred in the fixation of pay and re-fixation of pay and accordingly pay the correct salary to the petitioner but the excess payment already made to the writ petitioner cannot be recovered.

7. Accordingly, the order impugned passed by the respondent in proceedings Na.Ka.No.01/2018 dated 12.02.2018 is quashed to the extent of recovery of excess payment alone.

Accordingly, the writ petition stands allowed partly. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

dua/nsd

To
The Executive Officer,
Veerakkalpudur Selection Grade Town Panchayat,
Veerakkalpudur, Salem District.

+1cc to Mr.P.I.Thirumoorthy , Advocate SR.No. 14314

W.P.Nos.7115 & 7116 of 2018

A.SK(18/03/2019)



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