

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.2217 of 2013 and MP No.2 of 2013

S.Sanmugasundaram

.. Petitioner

Vs.

1. The Principal Secretary,
The Department of Municipality
Administrative and Water Supply,
Chennai 600 009.
2. The Commissioner,
Municipality Administration,
Chepauk, Chennai 600 005.
3. The Commissioner,
Valparai Municipality,
Valparai,
Coimbatore District.
4. The Executing Officer,
Vettaikkaran Pudur Town Panchayat,
Coimbatore.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of certiorari to call for the entire records of the 3rd respondent in Na.Ka.No.2426/2012/a.4 dated 28.09.2012 and quash the same.

For Petitioner :Mr.R.Y.George William

For Respondents: Mrs.K.Bhuvaneswari,
Additional Government Pleader
for R1&R2

Mrs. S.Gunasekar for R3.

Mr.P.Karthikeyan for R4

O R D E R

This writ petition has been filed challenging the order of the 3rd respondent in Na.Ka.No. 2426/2012/a.4 dated 28.09.2012.

2. The case of the petitioner is that the petitioner was appointed by the 4th respondent as a Skilled Labour Grade II. When the post of skilled labour was abolished, he was appointed as a Grade - I Electrician from 09.04.1992 with the Commissioner, Valparai Municipality. During that period, it was found that the petitioner's pay has been wrongly fixed and he infact should have been fixed as Grade II-Electrician. Based on the audit objection, an order dated 28.09.2012 was passed demoting him to Grade II, Electrician and also for recovery of an amount of Rs.1,19,912/-. The said order was challenged in the instant writ petition.

3. The learned counsel for the petitioner states that he did not receive any notice before the impugned order has been passed. After nearly 16 years, he has been placed as Grade II Electrician. The respondents, without affording any opportunity to the petitioner, ought not to have passed an order demoting the petitioner as Grade II Electrician and pass further order of recovery.

4. On the other hand, the learned counsel appearing for the 3rd respondent would submit that he was wrongly fixed as Grade I Electrician and he further states that only persons who have completed 12th standard can be appointed as Grade I Electrician. Since the petitioner did not have the educational qualification, he cannot be fixed as Grade I Electrician. The petitioner was therefore demoted as Grade II Electrician and consequently, the excess amount paid to him is sought to be recovered by the impugned order.

5. During the course of arguments, the learned counsel for the petitioner has restricted the relief only to the quantum of recovery of a sum of Rs.1,19,112/-. According to him, this issue of recovery of excess pay given to an employee after a long period of time has been deprecated by the Supreme Court. In this regard, the learned counsel has relied upon various Judgements of the Hon'ble Supreme Court that when there is no fault of the employee and the pay has been fixed by the Employer without there being any misappropriation on the part of the employee, then the employer cannot recover the amount.

6. The Hon'ble Supreme Court in [Syed Abdul Qadir Vs. State of Bihar] reported in 2009 3 SCC 475 is observed as follows :-

"58. The relief against recovery is granted

by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99."

7. Similarly in the case of [Shyam Babu Verma Vs. Union in India] in 1994 2 SCC 521 and it is observed as under :-

11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to 1 (1993) 1 SCC 539: 1993 SCC (L&S) 221: (1993) 23 ATC 657 the fault of the respondents, the petitioners being in no way responsible for the same.

8. Reference may also be made to the decision rendered by the Hon'ble Supreme Court in [B.K.Akkara Vs. Government of India] observed as under :-

28. Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from

the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

9. In view of the above said judgements, the order of recovery issued by the 3rd respondent for recovering the amount of Rs.1,19,912/- is hereby quashed. This writ petition is partly allowed. The excess payment recovered from the petitioner shall be returned back within a period of twelve weeks from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

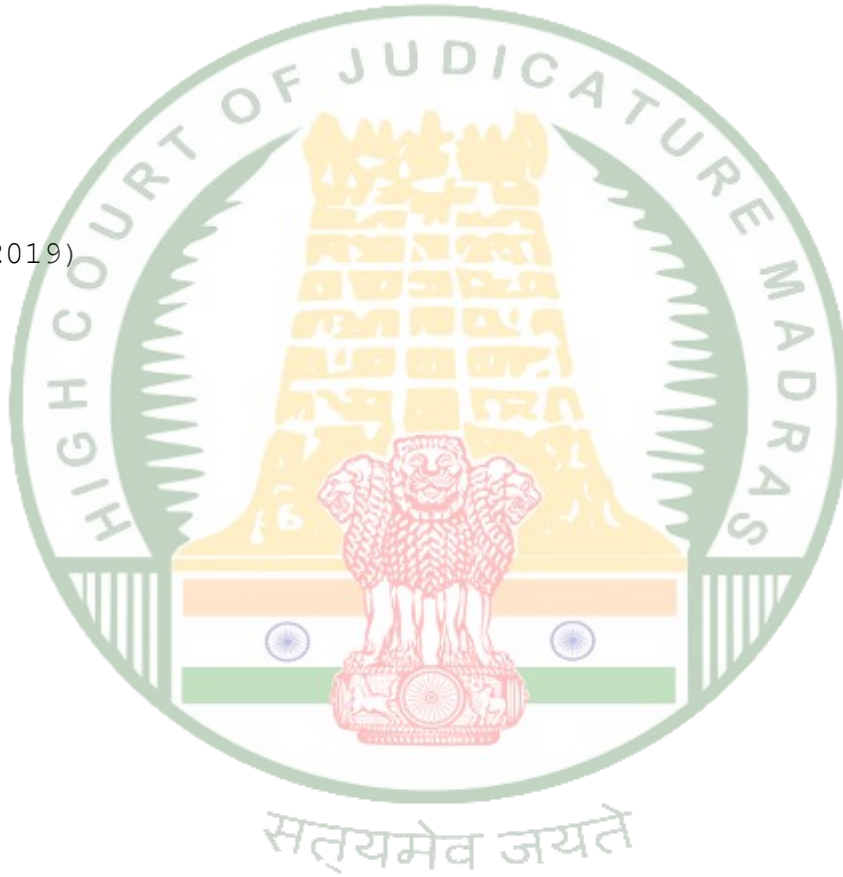
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+1 CC to Mr.R.Y.George William , Advocate sr 88494
+1 CC to The Govt. Pleader sr 89187
+1 CC to Mr.S. Gunasekaran, Advocate sr 88587.

W.P.No.2217 of 2013

AD(CO)
SP(06/12/2019)



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