

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2019

CORAM:

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

W.P.No.3967 of 2018 and

W.M.P.Nos.4854 & 4855 of 2018

S.P.Panneer Selvam,
Electrician Grade II,
Vandavasi Municipality,
Vadavasi. ... Petitioner

Vs.

1. The Assistant Director of Local Fund Audit,
Tiruvannamalai District.
2. The Commissioner,
Vandavasi Municipality,
Tiruvannamalai District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in Na.Ka.No...../B1/2016 dated Nil.10.2016 passed by the second respondent and quash the same and consequently direct the respondents to disburse the recovered amount to the petitioner with interest.

For Petitioner : Mr.S.Ilamvaludhi

For R1 : Mr.R.S.Selvam
Government Advocate

For R2 : Mr.O.Selvam

O R D E R

The order of rejection issued by the Commissioner, Vandavasi Municipality in October 2016 is under challenge in the present writ petition.

2 The learned counsel for the writ petitioner states that the petitioner has joined as Grade II Electrician in Vandavasi Municipality on 27.03.1984. He further states

that the scale of pay as applicable with reference to the Government orders were done by the second respondent and accordingly, the writ petitioner was receiving the salary. However, the impugned order of recovery was issued based on the audit objections raised by the audit parties. It is contended that no show cause notice or opportunity provided to the writ petitioner to defend his case and therefore, the impugned order is in violation of the principles of natural justice.

3 The learned counsel appearing for the respondents is unable to establish that the show cause notice was issued before issuing the impugned order of recovery. There is no reference in respect of the show cause notice in the impugned order which is now under challenge in the present writ petition.

4 This Court is of the considered opinion that any order passed by the competent authority affecting the service benefits of an employee must be issued only after providing an opportunity to the employee concerned. This being the principles to be followed, the impugned order issued is bad in law. This apart, the writ petitioner is working as the Group-C employee and recovery of such huge amount will effect the normal life of such employee.

5 The Honourable Supreme Court of India has also settled the legal principles in the matter of recovery. It is made clear that there is no misrepresentation on the part of the writ petitioner. The Supreme Court in the case of State of Punjab & Ors etc. Vs. Rafiq Masih (White Washer) etc, reported in 2015 4 SCC 334, in paragraph 18 of the judgment, the Hon'ble Supreme Court of India held that recovery from the retired employees or the employees who are due to retire within one year of the order of recovery is impermissible.

6 As far as Group-C employees are concerned, no recovery can be imposed even in the case where excess payments were made. However, the competent authorities are bound to correct the mistakes and pay the applicable salary as per the pay rules and Government orders prospectively. However, the excess payment cannot be recovered in view of the legal principles cited supra.

7 This being the factum of the case, the impugned order passed by the second respondent in proceedings issued in Na.Ka.No...../B1/2016 dated Nil.10.2016 is quashed. The respondents are directed to reimburse the amount, if any, recovered from the writ petitioner within a period of twelve weeks from the date of receipt of a copy of this

order and the respondents are also directed to correct the mistakes, if any, as applicable to the writ petitioner in accordance with the pay rules and the Government orders.

With these observations, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Assistant Director of Local Fund Audit,
Tiruvannamalai District.
2. The Commissioner,
Vandavasi Municipality,
Tiruvannamalai District.

+1cc to Mr. S.Ilamvaludhi , Advocate SR.No. 39586
+1 cc to Government Pleader Sr.No. 39861

A.SK(27/05/2019)

W.P.No.3967 of 2018

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