

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.13115 of 2019

W.M.P.Nos.13261, 13263 & 13266 of 2019

1.A.Karthigeyan
2.T.Arivalagam
3.S.Durairaj
4.A.Lakshmanan
5.K.Arujunan

..Petitioners

Vs.

1.The Commissioner of Municipal Administration,
Chepauk, Chennai-5.

2.The Commissioner,
Nelliyalam Municipality,
Pandalur Nilgris District.

..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 2nd respondent issued in Na.Ka.No.1621/2018/A2 dated 23.04.2019 and quash the same and consequently to direct the 2nd respondent to restore the original pay fixation to the petitioners in terms of his nil proceedings of the respondent dated 21.11.2012.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents : Mr.D.Suriya Narayanan
Additional Government Pleader
for R1 and R2

O R D E R

In view of the fact that the learned counsel for the writ petitioners confines the prayer sought for in the present writ petition to the recovery of amount, the writ petition is taken up for passing final orders.

2. The writ petitioners are serving as Group D employees and due to error in fixation of pay, excess salary was paid to them. The grievance of the writ petitioners is that there was no misrepresentation on their part. The respondent fixed the scale of pay applicable to the writ petitioners with reference to the Government Order and based on the rules in force. Thus, the recovery of excess amount will affect the normal family life of Group-D employees.

3. This Court is of the considered opinion that the error occurred on account of erroneous fixation can be corrected. However, the excess amount cannot be recovered. Even if it is paid by mistake, the writ petitioners/Grade-D employees, are not responsible for the fixation of pay. In the event of ordering recovery, undoubtedly, the same will cause inconvenience to the writ petitioners. Thus, the correct scale of pay now admitted by the writ petitioners can be implemented with immediate effect. However, the recovery of amount cannot be sustained. The legal principles in this regard are settled by the Supreme Court of India in *State of Punjab & Ors vs Rafiq Masih* [2015 (4) SCC 334], and the relevant paragraph is extracted here under:

"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, 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.

4. In view of the judgment of the Supreme Court cited supra, this Court is of the considered opinion that the recovery cannot be sustained and accordingly, the impugned order passed by the respondent in Na.Ka.No.1621/2018/A2 dated 23.04.2019 is quashed only with reference to the recovery of excess amount paid to the writ petitioners and it is made clear that the fixation of pay done in the impugned order shall be implemented with immediate effect.

5. In these terms, the writ petition stands partly allowed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb

To

1.The Commissioner of Municipal Administration,
Chepauk, Chennai-5.

2.The Commissioner,
Nelliyalam Municipality,
Pandalur Nilgris District.

+1cc to Mr.P.I.Thirumoorthy, Advocate, S.R.No.41654

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NRJK (CO)

vkr (21/05/2019)