IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.20342 of 2019 and
W.M.P.Nos.19679 and 19680 of 2019

A.Narayanasamy ... Petitioner

Versus

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

2. The Director,
   Local Fund Audit,
   Integrated Complex for Finance Department,
   4th Floor, Nandanam,
   Saidapet, Chennai-600 035.

3. The Commissioner,
   Thiruthuraipoondi Municipality,
   Thiruthuraipoondi,
   Thiruvarur District.

4. The Commissioner,
   Virudhachalam Municipality,
   Virudhachalam,
   Cuddalore District-606 001. ... Respondents

Prayer: This petition has been filed seeking for a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent pertaining to the issuance of Proceedings in Na.Ka.No.5326/2017/C1 dated 29.06.2018 and the consequential order passed in Ni.Mu.No.MPV(1)22593/18 dated 01.11.2018 on the file of the 2nd respondent and quash the same and consequently, direct the 3rd respondent to refund the payment of Rs.2,86,389/- received from the DCRG of the petitioner.

For Petitioner : Mr.M.Vijayamehanath

For Respondents : Mr.K.K.Ramesh,
1 and 2 Additional Government Pleader

For 3rd respondent : Mr.V.Jayaprakash Narayanan, Special Government Pleader

For 4th respondent : Mr.R.P.Prathap Singh

O R D E R

The petitioner has approached this Court seeking the following reliefs:

> To issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent pertaining to the issuance of Proceedings in Na.Ka.No.5326/2017/C1 dated 29.06.2018 and the consequential order passed in Ni.Mu.No.MPV(1)22593/18 dated 01.11.2018 on the file of the 2nd respondent and quash the same and consequently, direct the 3rd respondent to refund the payment of Rs.2,86,389/- received from the DCRG of the petitioner.

2. The case of the petitioner is that after rendering 27 years of service, the petitioner retired from service on attaining the age of superannuation on 30.06.2018. The petitioner lastly worked as a Manager in the 3rd respondent Municipality. During the entire period of service, the petitioner worked in various posts, namely, as Office Assistant, Junior Assistant, Revenue Inspector, Assistant and Manager.

3. On 19.09.2017, the 3rd respondent issued Proceedings revising the pay fixation granted to the petitioner and directed to recover the excess pay. The 3rd respondent revised the salary from the year 2006 and sought for consequential recovery. No notice was issued to the petitioner before passing such recovery order by the 3rd respondent. Further, no action was initiated by the 3rd respondent during 2017 in pursuance of the Proceedings dated 19.09.2017.

4. While matter stood thus, in anticipation of the superannuation of the petitioner on 30.06.2018, the pension proposal was submitted and ''No Objection Certificates'' were called for from various Municipalities where the petitioner worked in during his career. Such ''No Objection Certificate'' was also called for from the 4th respondent. The 4th respondent in response to the clarification sought for by the 3rd respondent issued a letter on 04.10.2017, claiming that for the period of service rendered by the petitioner in the 4th respondent from 20.09.2013 to 15.09.2015, there was an audit objection for the year 2011-12 and 2012-13 regarding excess payment made to the petitioner. The 3rd respondent issued a Proceedings on 22.3.2018 whereby it was intimated that Rs.2,86,397/- was sought to be

recovered from the petitioner and an action has been initiated in this regard and sought for ''No Objection Certificate from the 4th respondent''. The 4th respondent issued a Letter on 03.05.2018 granting ''No Objection Certificate'' for retirement of the petitioner with a condition that the said amount of Rs.2,86,397/- has to be recovered from his retirement benefits and paid to the 4th respondent.

5. According to the petitioner, the excess amount paid to him was calculated and arrived at behind the back of the petitioner, since no notice has been issued to him for such adverse re-fixation decision taken by the 3rd or 4th respondent. Subsequently, under the force and coercive circumstances, the petitioner has given an undertaking that the amount of Rs.2,86,397/- could be recovered from his retirement benefits and only on furnishing such undertaking, the petitioner was allowed to retire and he retired from service on 30.06.2018. On the basis of the Undertaking, a Proceedings was issued by the competent Authority on 29.06.2018, permitting the petitioner to retire from service on 30.06.2018 with condition that the amount of Rs.2,86,397/- would be recovered from his retirement benefits. The petitioner thereafter stood retired and after retirement, the present Writ Petition has been filed, challenging the order passed by the 1st respondent on 29.06.2018.

6. The learned Counsel appearing for the petitioner would submit that the order passed by the competent authority laying condition for recovering the money of Rs.2,86,389/- was per se illegal, unjust and as against the due process of law, since no notice was issued before passing the order of revision by the competent authority. Further, the petitioner was not put on notice at all at any any point of time before such adverse decision was taken by the authorities concerned. According to the petitioner that all the decisions were taken behind his back and unfortunately, the respondents have sought recovery as a condition for allowing the petitioner to retire from service. At that point of time, the petitioner was left with no other option, since otherwise, he would not have been allowed to retire and his retirement benefits would have been withheld.

7.After notice, the respondents 1 and 2 entered appearance through Mr.K.K.Ramesh, learned Additional Government Pleader, the 3rd respondent entered appearance through Mr.V.Jayaprakash Narayanan, learned Special Government Pleader and Mr.R.P.Prathap Singh entered appearance for 4th respondent.

8.A Counter Affidavit has been filed by the 3rd respondent.

9. In the counter affidavit, the only point of resistance raised by the 3rd respondent is the Undertaking given by the

petitioner for recovery of Rs.2,86,389/-.

10. From the above narration of facts, it is clear that the petitioner was forced to give an undertaking since he was due for retirement on 30.06.2018 and on furnishing such Undertaking only, the order was passed permitting him to retire from service on 30.06.2018. Such undertaking in the opinion of this Court cannot be countenanced in law since such Undertaking was obtained by force, coercion and undue influence. As rightly pointed out by the learned Counsel appearing for the petitioner, if the Undertaking was not given by the petitioner, he would not have been allowed to retire. Therefore, such Undertaking given by the petitioner under threat and duress cannot stand the test of judicial scrutiny of this Court.

11. Moreover from the materials as disclosed in the writ petition, it appears that no notice has been issued to the petitioner before any adverse decision was taken for revising of his salary by the 3rd respondent. Therefore, such recovery order is liable to be interfered with, as the principle of natural justice has been violated. In addition, the Hon'ble Supreme Court of India has repeatedly held that in case of any excess payment made to the Government Employees, the same cannot be recovered if such excess payment was not because of any misrepresentation by the employee concerned. In this case, it appears that the excess payment, which was recovered, was found by the Audit Authorities, that too, after a considerable lapse of time. Therefore, looking at any angle, this Court does not think that such action of recovery could be countenanced in law.

12. For the above said reasons, this Court is of the considered view that the petitioner has made out a case for grant of relief sought by him. Accordingly, the Writ Petition is allowed. The impugned order of the 3rd respondent pertaining to the issuance of Proceedings in Na.Ka.No.5326/2017/C1 dated 29.06.2018 and the consequential order passed in Ni.Mu.No.MPV(1) 22593/18 dated 01.11.2018 on the file of the 2nd respondent are hereby set aside. The respondents are directed to refund Rs.2,86,389/- (Rupees Two Lakhs Eighty Six Thousand Three Hundred and Eighty Nine Only), which was recovered from the petitioner, within a period of four weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petitions are closed.
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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2. The Director,
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   Integrated Complex for Finance Department,
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   Thiruvarur District.

4. The Commissioner,
   Virudhachalam Municipality,
   Virudhachalam,
   Cuddalore District-606 001.

+1cc to Mr.V.Jayaprakash Narayanan, Advocate, SR.No.68891
+1cc to Mr.R.P.Prathap Singh, Advocate, SR.No.69657
+1cc to M/s.M.Vijayamehanath, Advocate, SR.No.69662
+1cc to the Govt.Pleader, Vide Sr.No.69727

Writ Petition No.20342/2019

Kak(30/09/2019)