

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.NO.16387 OF 2017

AND

W.M.P.NO.17709 OF 2017

V.Raju

... Petitioner

Vs.

1. The Government of Tamilnadu  
Rep. by Secretary,  
Municipal Administration,  
Fort St. George,  
Chennai - 9.
2. The Commissioner,  
Erode Corporation,  
Erode District.
3. The Director,  
Municipal Administration,  
Chepauk,  
Chennai-5.

.... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2<sup>nd</sup> respondent in his proceedings in Na.Ka.No.C1/1138/2017 dated 15.06.2017 and quash the same and consequently direct the respondents No.1 to 3 to continue to pay the original salary with all emoluments to the petitioner herein as (park gardener) unskilled worker in accordance with law.

For petitioner : Mr.S.Sarath Kumar  
for Mr.M.Joseph Thatheus Jerome

For R1 and R3 : Ms.K.Bhuvaneswari  
Additional Government Pleader.

For R2 : Mr.M.Rajamathivanan

## ORDER

The instant writ petition is filed for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order, passed by the 2<sup>nd</sup> respondent in his proceedings in Na.Ka.No.C1/1138/2017, dated 15.06.2017, and to quash the same and consequently, to direct the respondents No.1 to 3, to continue to pay the original salary with all emoluments to the petitioner herein as (park gardener) unskilled worker, in accordance with law. By the impugned order the respondents have directed refixation of pay and recovery of money from the petitioner on the ground that the pay scale of the petitioner was wrongly fixed.

2. Learned counsel for the second respondent states that the matter is squarely covered by the judgment of the Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih reported in (2015) 4 SCC 334. It is relevant to extract paragraph No.18 of the said judgment, is as follows:-

"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 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 in 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."

3. The counsel for the petitioner does not contest the

position. In the light of the above decision, the instant writ petition is allowed, in as much as the recovery cannot be effected from the petitioner. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dm

To

1. The Government of Tamilnadu  
Rep. by Secretary,  
Municipal Administration,  
Fort St. George,  
Chennai - 9.
2. The Commissioner,  
Erode Corporation,  
Erode District.
3. The Director,  
Municipal Administration,  
Chepauk, Chennai-5.

+1cc to Mr.M.Rajamathivanan, Advocate, S.R.No.93141  
+1cc to Mr.M.Joseph Thatheus Jerome, Advocate, S.R.No.93231  
+1cc to the Government Pleader, S.R.No.93737

W.P.No.16387 of 2017  
and

सत्यमेव जयते

W.M.P.No.17709 of 2017

RR(CO)  
CS/26/12/2019

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