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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.Nos.18338 to 18340 of 2017

and

W.M.P.Nos.19910 to 19912 of 2017

S.Arivazhagan

... Petitioner
in WP.18338/2017

S.K.Sekar

... Petitioner
in WP.18339/2017

S.Manickam

... Petitioner
in WP.18340/2017

Vs.

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

... Respondents
(in all Wps)

Common 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 records relating to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No.C1/1898/2017 dated 22.06.2017 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 petitioners : Mr.S.Sarathkumar
for Mr.Joseph Thatheus Jerome
(in all WPs)



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For R1 and R3 : Ms.K.Bhuvaneswari
Additional Government Pleader.
(in all WPs)

For R2 : Mr.M.Rajamathivanan
(in all WPs)

COMMON ORDER

These instant writ petitions are filed for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No.C1/1898/2017, dated 22.06.2017 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.

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 respondents in all writ petitions, does not contest the position. In the light of the above decision, the instant writ petitions are allowed, in as much as the recovery cannot be effected from the petitioner in all writ petitions. No Costs. Consequently, the connected writ miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

dm

To

1. The Secretary,
Government of Tamilnadu
Municipal Administration Department,
Fort St. George, Chennai - 9.

2. The Commissioner,
Erode Corporation,
Erode District.

3. The Director,
Municipal Administration,
Chepauk, Chennai-5.

+3 CCS to Mr.M.Joseph Thatheus Jerome, Advocate sr 93232, 93233
& 93234

+3 CCS to Mr.M.Rajamathivanan, Advocate sr 93142, 93144, 93143.

+1 CC to The Govt. Pleader sr 93738.

W.P.Nos.18338 to 18340 of 2017
and
W.M.P.Nos.19910 to 19912 of 2017

NMI (CO)
SP(20/12/2019)