



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.16260 of 2015

and

M.P. (MD) No.2 of 2015

1.V.Uma
2.K.Dhanarani
3.S.Prabhavathy
4.V.Kamakodi
5.R.Janani
6.A.Batherunisa Beagum
7.V.Parimala
8.K.Malathy
9.N.Jayalakshmi
10.G.Rajeswari
11.D.Anbukarasi
12.R.Doris
13.P.Saratha
14.P.Chitra
15.S.Arulmozhi
16.R.Renganayaki
17.M.Tamilarasi
18.B.Dhanalakshmi

... Petitioners

-Vs-

The Commissioner,
Thanjavur Municipal Corporation,
Thanjavur.

...Respondent

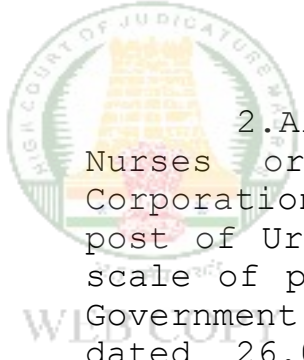
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the respondent in Na.Ka.No.7810/2015/H.1 dated 31.07.2015 and to quash the same.

For Petitioners
For Respondent

: Mr.G.Sankaran
: Mr.S.Pakalavan

ORDER

The order of re-fixation and recovery issued by the respondent in proceeding dated 31.07.2015 is sought to be quashed in the present Writ Petition.



2. All the writ petitioners are working as Urban Health Nurses or Maternity Assistant in the respondent Municipal Corporation. While granting the benefit of selection grade in the post of Urban Health Nurses or Maternity Assistant, a revision of scale of pay was granted to these writ petitioners, based on the Government Order in G.O.Ms.No.297, Finance (Pay Cell) Department, dated 26.08.2010 notionally with effect from 01.01.2006 and monetary benefits with effect from 01.08.2010.

3. Pursuant to the Government Order, revision of scale of pay was effected to the writ petitioners. Subsequently, based on the audit objections, the impugned order of recovery was issued on the ground that the revision of scale of pay granted to these writ petitioners are not applicable and it was erroneously granted. The impugned order also states that the error in the fixation of pay as well as the revision was objected by the audit party and consequently, the impugned order of recovery has been issued.

4. The learned counsel appearing on behalf of the respondent opposed the contentions by stating that the recovery was imposed, based on the audit objections, revision of scale of pay effected in favour of the writ petitioners was erroneous and not in accordance with the Government Order issued in G.O.Ms.No.297, Finance (Pay Cell) Department, dated 26.08.2010. On account of the fact that the revision of pay was granted erroneously, the recovery was imposed based on the audit objections.

5. Admittedly, no notice or opportunity was provided to these writ petitioners before issuing the impugned order of recovery. Any order affecting the service right or condition of an employee should be issued by the competent authority only after providing an opportunity to the employee concerned. This apart, the writ petitioners are working in Group-3 services, even in case of erroneous payment of salary, the same cannot be recovered, after a lapse of many years. However, the erroneous fixation or revision, if any, can be corrected with reference to the pay rules and the Government Orders in force. In other words, the competent authorities are empowered to correct the mistake in the scale of pay and revision of pay, but they cannot recover the excess salary already paid to these employees.

6. The legal principles already settled by the Hon'ble Supreme Court of India in the case of **State of Punjab Vs. Rafiq Maish** reported in **(2015) 4 SCC 334**. The relevant paragraph is extracted hereunder:-

"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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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."

7.As far as the Group-3 employees are concerned, even erroneous payments made at the instance of the establishment cannot be recovered after a lapse of many years. However, the erroneous fixation can be corrected with reference to the Government Orders and correct salary is to be paid prospectively.

8.In view of the fact that the writ petitioners are working in Group-3 services, the excess payments cannot be recovered. In fact, there was no misrepresentation or otherwise on the part of the writ petitioners. Under these circumstances, the following orders are passed:-

"1.The impugned order of recovery passed by the respondent in Na.Ka.No.7810/2015/H.1, dated 31.07.2015 is quashed.

2.The respondent is directed to correct the scale of pay and revision of pay in accordance with the pay rules and the Government Orders in force and pay the correct salary as applicable to the writ petitioners as per rules."



9. With these directions, this Writ Petition stands allowed.
No costs. Consequent, connected miscellaneous petition is closed.
Sd/-

WEB COPY

Assistant Registrar (CS-III)

// True Copy //

TO

Sub Assistant Registrar (CS)

+1cc to M/S. G.SANKARAN, Advocate, Sr.No.70172

+1cc to M/S SPECIAL GOVERNMENT PLEADER, Sr.No. 69915

Myr

W.P (MD) No.16260 of 2015

BUC (01/07/2019) 4P/3C