

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 20.06.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

WEB COPY

W.P. (MD) Nos. 19010 to 19018 of 2014andM.P. (MD) Nos. 1 and 2 of 2014 in all W.P.s

K.Senthur Pandian,	... Petitioner in WP(MD). 19010/ 2014
R. Ramesh,	... Petitioner in WP(MD). 19011/ 2014
T.Anburaj	... Petitioner in WP(MD). 19012/ 2014
A.Palvannam	... Petitioner in WP(MD). 19013/ 2014
P. Manikandan,	... Petitioner in WP(MD). 19014/ 2014
S. Ramasubbu	... Petitioner in WP(MD). 19015/ 2014
C.Karuppasamy,	... Petitioner in WP(MD). 19016/ 2014
P. Poonaiiah,	... Petitioner in WP(MD). 19017/ 2014
V.Eswaran	... Petitioner in WP(MD). 19018/ 2014

- Vs. -

1. State of Tamil Nadu,
Rep. by its Secretary,
Rural Development Department, Chennai 9
2. The District Collector,
Virudhunagar District, Virudhunagar
3. The Block Development Officer,
(Village Panchayats), Rajapalayam, Virudhunagar District.

... Respondents 1 to 3 in all WPs

The President,
Jameen Nallamangalam Panchayat, Pottalpatti Post,
Rajapalayam Taluk, Virudhunagar District.

... Respondent No.4 in WP(MD). 19010/ 2014



The President,
Chathrapatti Panchayat, Rajapalayam Taluk, Virudhunagar District.
... Respondent No.4 in WP(MD). 19011/ 2014

The President,
Thalavaipuram Panchayat, Rajapalayam Taluk, Virudhunagar District.
... Respondent No.4 in WP(MD). 19012/ 2014

The President,
Mugavaoor Panchayat, Rajapalayam Taluk, Virudhunagar District.
... Respondent No.4 in WP(MD). 19013/ 2014

The President,
Sundararajapuram Panchayat, Rajapalayam Taluk, Virudhunagar District.
... Respondent No.4 in WP(MD). 19014/ 2014

The President,
South Venganallur Panchayat, Rajapalayam Taluk, Virudhunagar District.
... Respondent No.4 in WP(MD). 19015/ 2014

The President,
North Devadhanam Panchayat, Rajapalayam Taluk, Virudhunagar District.
... Respondent No.4 in WP(MD). 19016/ 2014

The President,
Thenkarai Panchayat, Rajapalayam Taluk, Virudhunagar District.
... Respondent No.4 in WP(MD). 19017/ 2014

The President,
Ayankollankondan Panchayat, Rajapalayam Taluk, Virudhunagar District.
... Respondent No.4 in WP(MD). 19018/ 2014

COMMON PRAYER: Writ Petitions under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka./B2/ 1556/2010 dated 28.07.2014 and quash the same.

For Petitioner : Mrs.K.Kalaiyarasi Bharathi
(IN ALL WPs)

For Respondents : Mr.D.Muruganantham
(IN ALL WPs) Additional Government Pleader

**COMMON ORDER**

The order of recovery issued by the third respondent in proceeding, dated 28.07.2014, to recover the excess Pay Commission arrears paid to the writ petitioners is under Challenge in the present writ petitions.

2.The writ petitioners were initially appointed as Panchayat Clerks and thereafter promoted as Panchayat Secretary. The contentions of the writ petitioners are that the Government issued G.O.(Ms.)No.191, Finance (Pay Cell) Department, dated 29.04.1998 and issued orders revising the pay of the employees on Consolidated Pay/Honorarium/Fixed Pay be allowed to increase the remuneration subject to a minimum benefit of Rs.50/- per annum. After adjusting the three instalment of the interim relief and as such the employees of the Panchayat were also paid arrears from 01.01.1996.

3.The learned counsel appearing on behalf of the writ petitioners states that the writ petitioners are also eligible to avail benefits granted in G.O.(Ms.)No.191, dated 29.04.1998. The benefits granted in G.O.(Ms.)No.191 was sanctioned and disbursed to the writ petitioners by the respective Panchayats. Subsequently, there was an Audit objection on the ground that the said G.O.(Ms.) No.191, Finance (Pay Cell) Department, dated 29.04.1998 is not applicable in respect of the permanent employees of the Panchayat, who all are working in a sanctioned post in the regular time scale of pay. In other words, the G.O.(Ms.)No.191, dated 29.04.1998 is applicable only in respect of the employees, servicing on Consolidated Pay/ Honorarium / Fixed Pay. Thus, the benefits granted to the writ petitioners are erroneous and amounts to unjust enrichment.

4. Under these circumstances, the impugned order of recovery has been issued to recover the excess arrears of pay commission amount paid to these writ petitioners with reference to G.O.(Ms.) No.191.

5.The learned counsel appearing on behalf of the writ petitioners further states that this Court had already held that the benefit of G.O.(Ms.)No.191 is to be extended to the employees of the Panchayat, in view of the judgment of this Court, the benefits already extended to the writ petitioners is in accordance with the Government Order and therefore, the impugned order of the recovery is liable to be set aside.

6.The learned Additional Government Pleader appearing on behalf of the respondents disputed the contentions raised by the writ petitioners by stating that the order passed by the Division Bench in the Review Application in Rev.Applc(MD)No.178 of 2018, dated 05.04.2019 and the relevant portions are extracted here under:-



after adjusting the third instalment of Interim Relief paid with effect from 01.07.1996 and the adhoc arrear payment of Rs.500/-. Out of the net arrears, 20% shall be paid during this year and 20% shall be paid during the next financial year. The balance of 60% of net arrears shall be paid to them after 5 years (ie. in the year 2003-2004) with interest admissible on General Provident Fund.

5. Drawing and Disbursing Officers are responsible for the regulation of arrear payment and ensure maintenance of arrear records."

9. The Government Order cited supra unambiguously enumerates that the Government has accepted the recommendations of the Committee and direct the employees on Consolidated Pay/Honorarium/Fixed Pay be allowed 40% increase in their remuneration as on 01.01.1996.

10. When the Government has clearly stated that the recommendations of the official Committee on pay revision was accepted only with reference to the employees drawing Consolidated Pay/ Honorarium/Fixed Pay and the order was issued G.O.(Ms.)No.191, dated 29.04.1998. The said benefit of the order cannot be extended in respect of the employees, who all are working in a sanctioned post in a regular time scale of pay.

11. Admittedly, all these writ petitioners are permanent Government Servants working in the sanctioned post of Panchayat Secretary in a regular time scale of pay. Thus, the benefit of G.O. (Ms.)No.191, Finance (Pay Cell) Department, dated 29.04.1998 cannot be extended to these writ petitioners, so as to claim the arrears of pay commission.

12. The writ petitioners were paid the arrears of pay commission with reference to the Government Order passed in G.O.(Ms.)No.191, there was an Audit objection in respect of the arrears of pay commission disbursed in favour of the writ petitioners. Thus, the impugned order of recovery has been issued to recover the excess amount of pay commission arrears already paid to these writ petitioners.

13. This Court is of the considered opinion that any unjust enrichment by the Government employees from the tax payers money are bound to be recovered by the competent authorities and the said excess payment is to be deposited in the Government Accounts. No Government servant shall be permitted to receive tax payers money by way of unjust payments. The Government servants are not entitled to receive excess payment from the Government, the pay applicable and the pay commission arrears as directed alone must be paid to the Government employees. Excess payments can never be permitted, in view of the fact that it is the tax payers money and the Government servants cannot be allowed to enjoy any such excess payment of money



from such tax payers money.

14. The Hon'ble Supreme Court of India in the case of **Chandi Prasad Uniyal and others v. State of Uttarakhand and others** reported in **2012 (8) SCC 417**, the settled legal principles in the matter of recovery as follows;

"His lordship Justice K.S.P. Radhakrishnan, J., while speaking for the Bench considered the earlier judgment of the Supreme Court including the judgment of the Three Judge Bench of the Supreme Court in Saiyad Abdul Kadip reported in 2009 (3) SCC 475 as well as Shyam Babu Verma's case reported in **(1994) 2 SCC 521** held as follows:

14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case and in Col. B.J. Akkara (retd.) case, the excess payment made due to wrong/irregular pay fixation can always be recovered.

16. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess



payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012."

15. Subsequently, the Three Judge Bench of the Hon'ble Supreme Court of India in the case of State of Panjab and others etc Vs. Rafiq Masih (White Washer) reported in (2014) 8 SCC 883 again reiterated the principles laid down in the case of Chandi Prasad Uniyal and others v. State of Uttarakhand cited supra, para -8 of the judgment of the Three Judges Bench reiterates the legal principles laid down in Chandi Prasad Uniyal case as follows:-

"8. We are of the considered view, after going through various judgments cited at the bar, that this court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be recovered."

16. During the year 2015, once again the Two Judges Bench of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 Supreme Court Cases 334** in paragraph No.18 of the judgment is relevant and the same 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 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 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



iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

17. As far as 2015 case of the Supreme Court is concerned, the principles laid down in Chandi Prasad Uniyal case as well as in Rafiq Masih case by the Three Judges Bench of the Supreme Court was reiterated and only exceptions were drawn by stating that in the event of no misrepresentation on the part of the employees belonging to Group III and IV. The excess amount if at all any paid need not be recovered. However, the fixation can be corrected. Thus, 2015 judgment clarifies that only on certain circumstances in respect of certain class of employees and also the retired employees, the excess amount paid cannot be recovered and not in all other cases. Thus, the legal principles settled by the Chandi Prasad Uniyal case and Rafiq case decided by the Three Judges Bench of Supreme Court holds the field of recover and that is to be followed as a binding precedent.

18. Even recently, the Two Judges Bench of the Hon'ble Supreme Court in the case of High Court of Punjab and Haryana v. Jagdev Singh reported in AIR 2016 SC 3523 reiterated the principles followed by the earlier judgments of the Apex Court and accepted the exception carved out in 2015 Rafiq Masih case. Thus, the legal position in the matter of recovery is now settled and accordingly the Government Servants cannot be allowed to enjoy any unjust enrichment of tax payers money.

19. There is a growing trend in the State of Tamil Nadu that the Sub-ordinate officials at the District level and in Panchayat level such Government Orders are some time misinterpret to the advantage of the employees and arrears of amount are drawn from the Government Treasuries. In other words, there are large scale collusions amongst to the District level authorities with the employees for the purpose of drawing these pay commission arrears and thereby causing financial loss to the State exchequer for the purpose of gaining unjust enrichment in favour of the employees. These aspects sought to be clearly considered by the Higher Authorities of the Government and all appropriate actions are to be initiated against in all such cases.

20. This Court is of the considered opinion when the Government properties and materials are lost in the godown, the Government Order says that the lost to be recovered from the official, who all are responsible for such financial loss. For instance, if some goods kept in the Government godown or missing or stolen which could not be traced out subsequently, then all the officials, who all are responsible and accountable for the maintenance of such goods must be directed to pay the financial loss occurred to the State exchequer. The recovery is imposed by fixing ratio with reference to the cadre, in which, such officials are serving. When such Government Orders are passed to make good the financial loss



occurred to the Government, then the same principle is to be adopted in respect of such excess payment of arrears of pay commission or salary paid to the employees of the Government, Panchayat etc..

21. It is made clear that when ever a wrong fixation is made by the establishment of the Government Department or Panchayat or other Organization of the Government and if it is subsequently noticed by the Audit party or by the Accountant General of Tamil nadu, then, an enquiry must be conducted by the competent authority and if there is lapse, negligence or dereliction of duty or collusion or otherwise on the part of the officials concerned, then all suitable actions are to be initiated to fix the responsibility and accountability on the officials and the amount of loss are to be recovered from those employees also by fixing the ratio amongst all these officials, who all are liable.

22. Such a procedure must be followed herein after in the matter of excess payment of salary, pay commission arrears or otherwise to the Government employees, Panchayat employees or other employees of Government Organizations and Institutions.

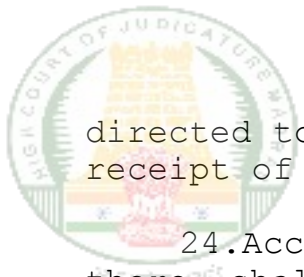
23. As far as the present Writ Petitions are concerned, admittedly, the writ petitioners are working as Panchayat Secretaries in a permanent sanctioned post in the regular time scale of pay. Thus, they are undoubtedly, not entitled to avail the benefit of Government Order issued in G.O.(Ms.)No.191, Finance (Pay Cell) Department, dated 29.04.1998. The Audit objection raised is inconsonance with the Government Order passed in G.O.(Ms.)No.191. Thus, the recovery impugned is in accord with the conditions stipulated in the Government Order as well as the objections raised by the Audit group. Thus, there is no infirmity as such in respect of impugned order. Accordingly, the following orders are passed:

(i) the relief as such sought for in these writ petition stand rejected;

(ii) the respondents are directed to fix the correct pay of the writ petitioners as applicable to their respective posts strictly in accordance with the Government Orders and the pay rules in force;

(iii) the excess amount, which is to be considered as an unjust enrichment of taxpayers money is to be recovered from the writ petitioners by way of equal monthly installments to be fixed by the competent authorities/respondents;

(iv) the first respondent is directed to issue a consolidated instructions to all the District Collectors and other Subordinate officials to ensure that in the event of excess or erroneous payments are made to the employees, the officials, who all are responsible and accountable, must also face the disciplinary proceedings as well as the recovery as discussed in the judgment in the aforementioned paragraph. Such an instruction/circular is



directed to be issued within a period of four weeks from the date of receipt of a copy of this order.

24. Accordingly, the Writ Petitions are disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

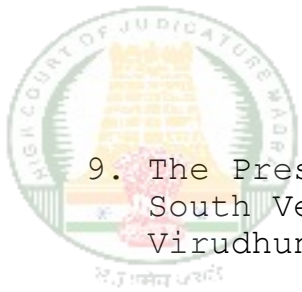
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Sub Assistant Registrar (CS)

Ls/Ns

To

1. The Secretary ,
Rural Development Department,
Chennai - 600 009
2. The District Collector,
Virudhunagar District,
Virudhunagar.
3. The Block Development Officer,
(Village Panchayats),
Rajapalayam,
Virudhunagar District.
4. The President,
Jameen Nallamangalam Panchayat, Pottalpatti Post,
Rajapalayam Taluk, Virudhunagar District.
5. The President,
Chathrapatti Panchayat, Rajapalayam Taluk, Virudhunagar District.
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Thalavaipuram Panchayat, Rajapalayam Taluk,
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Thenkarai Panchayat, Rajapalayam Taluk,
Virudhunagar District.

12. The President,
Ayankollankondan Panchayat, Rajapalayam Taluk,
Virudhunagar District.

1CC TO M/S. P.KALAIYARASI BHARATHI, ADVOCATE SR 70269

TR

16/07/2019

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W.P.(MD)Nos.19010 to 19018 of 2014

20.06.2019