



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) Nos. 21142 and 21159 of 2015

and

M.P. (MD) Nos. 2, 2 and 3 of 2015

K. Alagesan ... Petitioner in W.P. (MD) No. 21142 of 2015
C. Pandiammal ... Petitioner in W.P. (MD) No. 21159 of 2015
-Vs-

1. The Principal Secretary,
Municipal Administration and
Water Supply Department,
St. George Fort, Chennai-9.

2. The Director of Municipal Administration,
Chennai.

3. The Commissioner,
Koodalur Municipality,
Theni District.

... Respondents

Common Prayer: Writ Petitions are 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 order of recovery in Na.Ka.No.1420/2014/C1 dated 13.03.2015 passed by the third respondent and quash the same as illegal.

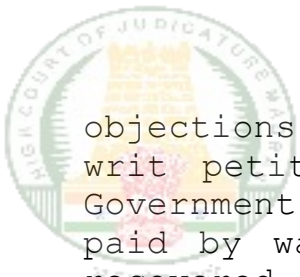
For Petitioners : Mr. B. Vinoth Kumar
(in both Writ Petitions)

For Respondents : Mr. M. Jeyakumar,
Additional Government Pleader.
(in both Writ Petitions)

COMMON ORDER

The order of recovery dated 13.03.2015 issued by the third respondent is under challenge in the present Writ Petitions.

2. The writ petitioners are working as Scavengers in Koodaloor Town Panchayat, Theni District. The fixation of pay to the writ petitioners was done by the establishment of the respondents and there was no misrepresentation or otherwise on the part of the writ petitioners. However, the third respondent issued the impugned order based on the audit objections raised by the Local Fund Audit and accordingly, imposed recovery. Audit



objections were raised on the ground that pay fixation done to the writ petitioners was erroneous and not in accordance with the Government Orders in force. Consequently, excess amount already paid by way of salary to the writ petitioners is sought to be recovered.

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3. Admittedly, the writ petitioners are working as Scavengers, which is under Group-4 service. Thus, excess amount already paid by way of salary cannot be recovered from the writ petitioners. This apart, no notice or opportunity was given to the writ petitioners even to defend their case. Thus, the impugned order passed by the third respondent is in violation of the principles of natural justice.

4. The legal principles in this regard are 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 of the said Judgment 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."

5. In view of the facts and circumstances, the following orders are passed:-

<https://hcservices.ecourts.gov.in/hcservices/>

"1. The impugned order of recovery passed by the third respondent in Na.Ka.No.1420/2014/C1, dated



13.03.2015 in both Writ Petitions is quashed.

2.The respondents are directed to correct the mistakes if any occurred in the fixation of pay and revision of pay and accordingly, pay correct salary in accordance with the pay rules and the Government Orders in force."

6.With these observations, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Principal Secretary,
Municipal Administration and
Water Supply Department,
St. George Fort, Chennai-9.

2.The Director of Municipal Administration,
Chennai.

3.The Commissioner,
Koodalur Municipality,
Theni District.

+1 CC to M/s.SPL GP (SR-70304[F] dated 20/06/2019)

+2 CC to M/s.B.VINOTH KUMAR, Advocate (SR-70638&70637[F] dated 21/06/2019)

MYR

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