



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

WEB COPY

W.P. (MD) No. 21403 of 2015

and

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

1. M. Palaniammal
2. M. Manoharan
3. S. Kamatchi
4. P. Raj

... Petitioners

-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

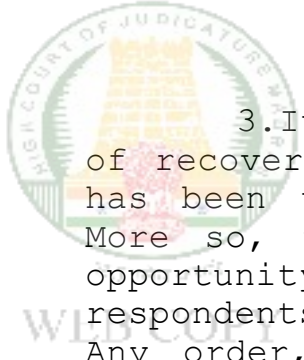
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the third respondent from recover any amount from the petitioners' monthly salary and direct the third respondent to refund the amount already recovered from the petitioners' salary.

For Petitioners	: Mr. B. Vinoth Kumar
For Respondents	: Mr. M. Jeyakumar, Additional Government Pleader.

ORDER

The relief sought for in the present Writ Petition is to forbear the third respondent from recovering the alleged excess salary paid to the writ petitioners and refund the amount already recovered from the salary of the writ petitioners'.

2. The writ petitioners are working as Scavengers in Koodaloor Town Panchayat, Theni District and the fixation of pay was done by the respondents in accordance with the Government Orders in force. There was no misrepresentation or otherwise on the part of the writ petitioners. Thus, the recovery sought to be imposed pursuant to the audit objections, is unsustainable.



3. It is brought to the notice of this Court that the order of recovery has not been passed properly and unilateral decision has been taken by the authorities to recover from the salary. More so, they have not issued any show cause notice or given opportunity to the writ petitioners. Thus, entire actions of the respondents are in violation of the principles of natural justice. Any order, affecting the service rights and conditions of the employee, cannot be issued without providing opportunity to the employee concerned.

4. This being the basic principles to be followed, this Court is of the considered opinion that the action of the respondents in recovering the excess payment from the salary of the writ petitioners is impermissible and illegal.

5. The learned Additional Government Pleader appearing for the respondents is unable to establish that any such notice or opportunity provided to the writ petitioner before issuing the impugned order of recovery. Even in case of an excess amount at the instance of the establishment of the respondents, the same cannot be recovered from the writ petitioner, after a lapse of many years.

6. In view of the fact that there was no misrepresentation as well as the writ petitioners are working in Group-4 Services, the legal principles in this regard settled in the case of **State of Punjab Vs. Rafiq Maish** reported in **(2015) 4 SCC 334**, are to be applied. 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."

7. The learned counsel appearing for the writ petitioners brought to the notice of this Court that two months of salary has already been recovered. Thus, the respondents are liable to re-imburse the same.

8. Under these circumstances, the following orders are passed:-

"The respondents are directed to fix the correct scale of pay and the salary in accordance with the pay rules and the Government Orders in force and disburse the same to the writ petitioners. However, excess amount already paid to the writ petitioner by way of salary cannot be recovered at all."

9. With this observation, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

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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 Mr. B. Vinoth Kumar, Advocate in SR.No.70639

+ 1 CC to The Special Government Pleader SR.No.70301

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