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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .Nos.17061 to 17063 of 2014

and

M.P(MD)Nos.1,1,1,2,2,2 and 3 of 2014

M.Karthik ... Petitioner in W.P.(MD)No.17061 of 2014
T.Ramar ... Petitioner in W.P.(MD)No.17062 of 2014
S.Kannan ... Petitioner in W.P.(MD)No.17063 of 2014

-Vs-

1.The District Collector,
Theni District, Theni.

2.The Tahsildhar,
Uthamapalayam Taluk,
Theni District.

... Respondents in all Petitions

Prayer in W.P.(MD) Nos.17061 and 17062 of 2014: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order made in Na.ka.No. 5855/2014/A4 dated 19.08.2014 passed by the 2nd respondent and quash the same in so far as the petitioner is concerned.

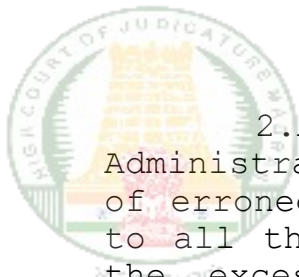
Prayer in W.P.(MD) No.17063 of 2014: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order made in Na.ka.No. 5855/2014/A4 dated 16.06.2014 passed by the 2nd respondent and quash the same in so far as the petitioner is concerned.

For Petitioner
(in all petitions) : Mr.S.Palaramasamy

For Respondents
(in all petitions) : Mr.S.Dhayalan
Government Advocate

COMMON ORDER

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The impugned orders of recovery in all these writ petitions are under challenge in these writ petitions.



2. All the writ petitioners are serving as Village Administrative Officer. The impugned orders state that on account of erroneous fixation of scale of pay excess salary had been paid to all these writ petitioners. In respect of two writ petitions, the excess payment of travelling allowance is sought to be recovered. Right the excess payment made over and above the liability of these writ petitioners are sought to be recovered by the respondents through the impugned orders of recovery.

3. The learned counsel for the writ petitioners mainly contended that no notice or opportunity was given to the writ petitioners. Thus, the orders impugned in the violation of the principles of natural justice.

4. The learned Government Advocate appearing on behalf of the respondents are unable to establish that the show cause notice or opportunity was provided to the writ petitioners before issuing the impugned orders of the recovery. In the absence of any documents to establish that an opportunity was provided to the affected persons, this Court is of the opinion that the orders of recovery are in violation of the principles of natural justice. Thus, the present writ petitions are to be remanded.

5. The legal principles to be adopted is that as far as Group-III and Group-IV employees are concerned, even in case of excess payment, the same cannot be recovered after a lapse of many years. However, if there is any misrepresentation or any undertaking by the employee concerned then the excess payment, if at all made can be recovered by the competent authorities.

6. Yet another point to be considered by this Court is that in the case of erroneous fixation by the establishment of the respondents, then the District Collector or the Tahsildar or for any other competent authority are bound to conduct an enquiry and if the excess payment is made on account of the erroneous fixation of pay or erroneous consideration of the allowance rules, then the said excess amount is to be recovered from the officials, who all are responsible and accountable for such wrong fixing of pay or payment of allowance etc.

7. The ultimate point to be considered by this Court is that no Government employee can take away any excess payment from the State exchequer. The tax pay money cannot be mis-utilised or excessively taken by these officials. In the event of financial loss to the State, the said financial loss is to be recovered from the employee concerned at the first instance and if the same is unable to be recovered from the employees salary, on account of certain legal principles, then, the said financial loss is to be recovered from the officials, who have committed an error or fixed this scale of pay in violation of the Government Orders and pay rules in force. In any event, the financial loss to the Government must be recovered and the same must be deposited in the Government



accounts. This being the legal principles to be followed, this Court is of the considered opinion that the first respondent is directed to conduct a detailed enquiry in respect of the excess payment made in favour of all these writ petitioners and initiate appropriate action.

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8. After conducting an enquiry, the respondents are directed to issue a show cause notice to the respondents setting out all the facts and details and thereafter, on receipt of the explanations / objections from the writ petitioners, the final orders can be passed on merits in accordance with law. In this regard, the respondents are directed to conduct an enquiry within a period of four weeks from the date or receipt of a copy of this order and thereafter, issued show cause notice to the writ petitioners within a period of four weeks from the date of completion of the enquiry and the writ petitioners are directed to submit explanations / objections within a period of three weeks from the date of receipt of the show cause notice from the respondents and on receipt of the explanations / objections, the respondents are directed to pass final orders on merits and in accordance with law within a period of four weeks therefrom.

9. With these directions, the impugned orders are set aside and these Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

sjj/Ns

To

1. The District Collector,
Theni District, Theni.

2. The Tahsildhar,
Uthamapalayam Taluk,
Theni District.

+3CC TO MR. PALA RAMASAMY, Advocate Sr. No. 75569

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR. No. 75231

W.P. (MD). Nos. 17061 to 17063 of 2014

AL (CO)

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