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

DATED: **16.12.2019**

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU**

**W.P.(MD)No.401 of 2014**

**and**

**M.P(MD).No.1 of 2014**

M.Anbazhagan .. Petitioner

**vs**

1.The Director
Local Body Finance and Audit Department
Chennai

2.The Commissioner
Kadayanallur Municipality
Kadayanallur
Tirunelveli District ... Respondents

**PRAYER:**Petition filed under Article 226 of the constitution of India to issue a writ of Certiorarified Mandamus, to call for the records of the second respondent in Na.Ka.No.4935/2013/C1, dated 22.11.2013 and quash the same and consequently direct the 2nd respondent to return the recovered amount as per his order in Na.Ka.No.4935/2013/C1, dated 22.11.2013 to the petitioner account.

For Petitioner ... Mr.M.Mohamed Sherbudeen
For R1 ... Mr.S.Dhayalan
Government Advocate
For R2 .... No appearance

ORDER

This Writ petition has been filed to call for the records of the second respondent in Na.Ka.No.4935/2013/C1, dated 22.11.2013 and quash the same and consequently direct the 2nd respondent to return the recovered amount as per his order in Na.Ka.No.4935/2013/C1, dated 22.11.2013 to the petitioner account.

2.The petitioner was working as Lorry Driver in the second respondent Municipality and he has entered in service in the year 1999. After completion of ten years service, in the year 2009, selection grade was given to the petitioner and pay was fixed as 4000-100-6000 vide second respondent order, dated 18.02.2009. In the said circumstances, the Government has passed an order in G.O.Ms.No.234 Finance (PC) Department dated 01.06.2009 that the petitioner's pay was revised and fixed as Rs.5200-20200-2000. Accordingly, the second respondent sanctioned the arrears amount of the petitioner.

3.The learned counsel for the petitioner would submit that in order to give the said revised scale of pay, as per the Tamil Nadu Revised Scale of pay Rules, 2009, the second respondent should get option from the petitioner as stated in Schedule IV of Rule-3 and the Government by letter No.41530/Pay Cell/2009-1, dated 28.07.2009 gave further period of three months to get option from the employee by the second respondent. The Government once again fixed pay for all departments' drivers and passed G.O.Ms.No.65, Finance (PC) Department dated 26.02.2011. As per the said Government order, the petitioner pay was revised and fixed as 5200-20200-2400. Thus, his pay of Rs.2000/- was taken as Rs.2400/- from 01.01.2006 as the monetary benefits payable from 01.03.2011. Thus, the second respondent passed orders accordingly in Na.Ka.No.1411/2011/C1, dated 19.05.2011 and fixed the petitioner's revised pay from 01.01.2006. But, the second respondent failed to get option from the petitioner to fix the pay as per the Tamil Nadu Revised Scale of Pay Rules, 2009. According to the petitioner, he has not made any misrepresentation or suppression to the second respondent or to any other authority. According to him, all the proceedings are made lawfully with the directions of the Government by the second respondent. In this circumstance, without issuing show cause notice and without conducting any enquiry, the second respondent passed the recovery order in Na.Ka.No.7244/2011/C1, dated 22.04.2013 and informed that the petitioner's pay fixation was wrong as per the 1st respondent's order in Moo.Moo.No.2726/NaOSa/3/2013, dated 06.02.2013 and therefore, the petitioner constrained to file W.P.No.9836 of 2013, challenging the said order dated 22.04.2013. This Court, by order dated 22.04.2013, set aside the order passed by the authority and direction was given to the respondents to issue show cause notice to the petitioner calling upon him to show cause as to why recovery should not be made, for which, this Court specifically directed the second respondent to furnish the copy of the Audit Report, dated 06.02.2013 along with show cause notice, so as to enable the petitioner to give reply. But, the second respondent failed to furnish the Audit Report which is the root for the present impugned proceedings. Hence, he prays for allowing this Writ petition.

4. The learned Government Advocate appearing for the first respondent would state that the recovery was made by following the due process of law, as it is the public money and therefore, he would state that the impugned order does not warrant any interference.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the first respondent and perused the materials available on record.

6.It is an admitted fact that the recovery has been made based on the Audit Report. On perusal of record shows that this Court directed the second respondent in the earlier round of litigation, to give copy of the audit report to the petitioner, but admittedly the same has not been complied by the second respondent. In case, an excess amount has been paid not on fault or misrepresentation committed by the Government Servant, the same cannot be recovered from the Government Servant and the learned counsel for the petitioner would rely on various judgements viz., the Judgment of the Hon'ble Supreme Court reported in ***(2009) 3 SCC 475 in Syed Abdul Qadir Vs.State of Bihar*** and the Judgment of this Court reported in ***(2010) 3 MLJ 934 in P.Subramanian Vs. Government of Tamil Nadu, represented by the Secretary to Government Adi Dravidar & Tribunal Welfare Department, Chennai and others*** and another Judgment of this Court reported in ***(2006) 1 M.L.J.143 in D.Palavesamuthu Vs. Tamil Nadu Administrative Tribunal, represented by its Registrar, Chennai and others*** and all the Judgements are squarely applicable to the case of the petitioner where the above mentioned Judgments have categorically stated that any excess amount paid to the Government employee, when there is no fault on the part of the employee, the said excess amount cannot be recovered from the employee.

7.In view of the above, the order passed by the second respondent in Na.Ka.No.4935/2013/C1, dated 22.11.2013 is quashed and this Writ petition is allowed. The second respondent is directed to refund the recovered amount to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/  /2020

Sub Assistant Registrar(CS)

Msa

To

The Director
Local Body Finance and Audit Department
Chennai

+1 CC to Mr.A.HAJAMOHIDEEN, Advocate ( SR-105186[F]dated 16/12/2019 )

+1 CC to SPL.GP ( SR-105327[F] dated 17/12/2019 )

**W.P.(MD)No.401 of 2014**
**and**
**M.P(MD).No.1 of 2014**
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