

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.01.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3906 of 2019

THE COMMISSIONER
NELLIYALAM MUNICIPALITY
PANDALUR, NILGIRIS DISTRICT. ... Appellant

Vs

1 A.KARTHIGEYAN
2 T. ARIVALAGAN
3 S. DURAIRAJ
4 A. LAKSHMANAN
5 K. ARUJUNAN
6 THE COMMISSIONER OF MUNICIPAL
ADMINISTRATION
CHEPAUK, CHENNAI. ... Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 29.4.2019 passed by the learned Single Judge in W.P.No.13115 of 2019.

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 2nd respondent issued in Na.Ka.No.1621/2018/A2 dated 23.04.2019 and quash the same and consequently to direct the 2nd respondent to restore the original pay fixation to the petitioners in terms of his nil proceedings of the respondent dated 21.11.2012.

For Appellant : Mr.G.Mutharasu

For Respondents : Mr.P.I.Thirumoorthy
for respondents 1 to 5

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard learned counsel for the appellant Nelliyalam Municipality, Pandalur, Nilgiris District.

2. The challenge raised is to the impugned judgment dated 29.4.2019, whereby the learned Single Judge has allowed the writ petition and quashed the notice of recovery against the respondents/writ petitioners, on the ground that since the payment, even though on wrong fixation, was not an outcome of any fraud or misrepresentation on the part of the respondents/writ petitioners, recovery cannot be made in view of the law laid down by the Apex Court in State of Punjab v. Rafiq Masih, reported in (2015) 4 SCC 334.

3. The contention raised by the Municipality is that the law laid down in this regard is also to the effect that in case an incorrect fixation has been made, may be not on any fault attributable to the employee, the same can be corrected, inasmuch as rectification of an error is permissible. In the present case, except one, namely the second respondent, the other four employees are still in employment.

4. Having considered the submissions raised on behalf of the appellant and having heard Mr.P.I.Thirumoorthy, learned counsel representing the respondents/writ petitioners, the ratio that can be gathered from the decisions that have been relied on by the learned counsel for the parties, as indicated in the impugned judgment, is to the effect that an amount already paid cannot be recovered and, therefore, we direct that any actual amount having been disbursed to the respondents/writ petitioners shall not be recovered from them. We further clarify that the employee who had retired, namely the second respondent, shall not be put to any further process of recovery at all.

5. However, the respondents/petitioners who are still in employment shall not be called upon to disgorge the amount which has already been paid to them, but the appellant will have to correct the error which has crept on account of wrong fixation and the said respondents shall be entitled only to the rectified amount as permissible in future without taking recourse to any recovery of the amount actually paid to them.

The writ appeal stands partly allowed to the above said extent. No costs. Consequently, C.M.P.No.24554 of 2019 is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

sasi

To:

1.THE COMMISSIONER OF MUNICPAL ADMINISTRATION
CHEPAUK, CHENNAI.

2.The Commissioner,
Nelliyalam Municipality,
Pandalur Nilgiris District.

+lcc to Mr.P.I.Thirumoorthy, Advocate, S.R.No. 3277

+lcc to Mr.D.Suryanarayanan, Advocate, S.R.No. 3658

W.A.No.3906 of 2019

SSI (CO)
GN (05/02/2020)



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