



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.19115 of 2015

and

M.P (MD)Nos.1&2 of 2015

WEB COPY

G.Mookkan

... Petitioner

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 filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order of recovery in Na.Ka.No.1420/2014/C1, dated 13.03.2015 passed by the 3rd respondent and quash the same as illegal and arbitrary.

For Petitioner : Mr.B.Vinoth Kumar

For Respondents: Mr.S.Dhayalan
(R1 and R2) Govt.Advocate

For Respondent-3: Mr.Karuppasamy Pandian

O R D E R

The order of recovery, dated 13.03.2015, issued by the 3rd respondent is under challenge in the present Writ Petition.

2.The writ petitioner is working as Scavenger in Koodaloor Town Panchayat, Theni District. The fixation of pay to the writ petitioner was done by the Establishment of the respondents and there was no misrepresentation or otherwise on the part of the writ petitioner. 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 petitioner was erroneous and not in accordance with the Government Orders in force. Consequently, excess amount already paid by way of salary to the writ petitioner is sought to be recovered.

3. Admittedly, the writ petitioner is working as Scavenger, which is under Group-4 service. Thus, excess amount already paid by way of salary cannot be recovered from the writ petitioner. This apart, no notice or opportunity was given to the writ petitioner even to defend his case. Thus, the impugned order passed by the 3rd 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:-

"1. The impugned order of recovery passed by the 3rd respondent in Na.Ka.No.1420/2014/C1, dated 13.03.2015, 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, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

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 SGP (SR-24695[F] dated 09/12/2020)

W.P. (MD)No.19115 of 2015

08.12.2020

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NR (21/12/2020) 3P : 5C