



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2021

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.1012 of 2016

and

W.M.P.Nos.774 & 775 of 2016

M.Mayavan

... Petitioner

Vs

1. The Director of Municipal Administration,
Chepauk,
Chennai-5.

2. The Commissioner,
Namakkal Municipality,
Namakkal District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned letter issued by the first respondent in proceedings in Rc.Lr.No.45529/F3/2010, dated 21.05.2015 and the consequential impugned order of re-fixation issued by the second respondent in proceeding Na.Ka.No.3930/2015/C1 dated 25.08.2015 and the subsequent order of recovery of excess pay issued by the second respondent in proceeding Na.Ka.No.3930/2015/C1 dated 26.11.2015 and quash the same.

For Petitioner : Ms.Swadhi Subramaniam

For R1 : Mr.K.V.Sajeev Kumar
Government Counsel

For R2 : Mr.M.Rajamathivanan
Standing Counsel

O R D E R

The petitioner herein is employed as fountain Cleaner under the second respondent Municipality. Admittedly, the post is categorised as Group D/Group IV post.

2. In G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010, the Government had revised the scale of pay and re-designated certain categories of employees. Based on the said Government Order, the petitioner's scale of pay was revised notionally and monetary benefits were also extended to



him. In this background, by the impugned order dated 25.08.2015, which was based on the instructions of the first respondent dated 21.05.2015, 36 posts were deleted, among which, the petitioner's post also finds place and accordingly, the scale of pay was reduced and recovery of the excess payment made has been ordered. Aggrieved against the same, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner would place reliance on the decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334, and submit that, recovery from employees belonging to Class III and Class IV services is impermissible in law and hence, the impugned order cannot be sustained. It is her further submission that pursuant to the aforesaid decision of the Hon'ble Supreme Court, the Government has also issued instructions in G.O.M.S.No.286, Finance (Pension) Department, dated 28.08.2018, reiterating the findings of the Hon'ble supreme Court in White Washer's case (supra).

4. Per contra, the learned Government Counsel appearing for the first respondent as well as the Standing Counsel appearing for the second respondent would submit that the reduction of pay was pursuant to the instructions issued by the first respondent on 21.05.2015, whereby it was held that the technical categories in various municipality services have been grouped and re-designated, consequent to which, certain posts brought under the category of 'other trade posts', were deleted. In view of the same, the selection grade and special grade scales for these posts requires to give restriction to that of the ordinary/selection grade of pay for the promotion and therefore, the pay already fixed in the higher scale had been cancelled and the pay of the individual requires to be fixed. In view of the further instructions given in the Government Order, the excess pay due was directed to be recovered from the individuals. Both the learned counsel for the respondents had therefore attempted to justify the action on the part of the second respondent in passing the impugned order of recovery, which was pursuant to the instructions of the first respondent dated 21.05.2015.

5. A mere justification of the action of the second respondent, which was based on the first respondent's instructions, may not be sufficient to permit them to recover the alleged excess payment made. As rightly pointed out by the learned counsel for the petitioner, the Hon'ble Supreme Court in the White Washer's case, (supra) had summarised certain situations wherein, recoveries from Class IV employees and recoveries, where the excess payments have been made for a period in excess of five years, were held as impermissible in law. The relevant portion of the order reads as follows:



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"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.

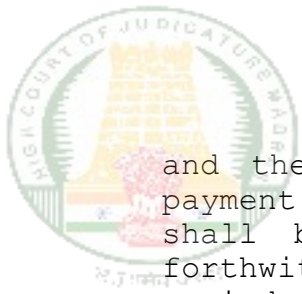
(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(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."

6. The Government had also chose it appropriate to abide by the orders of the Hon'ble Supreme Court in White Washer's case (supra) and consequently had issued G.O.Ms.No.286 dated 28.08.2018, reiterating the findings of the Hon'ble Apex Court, which has been extracted above.

7. In this background, I do not find any justification on the part of the second respondent in ordering for recovery of the alleged excess payment. In view of the decision laid down by the Hon'ble Apex Court in White Washer's case (supra) and the subsequent Government Order in G.O.Ms.No.286 dated 28.08.2018, the impugned order cannot be sustained.

8. In the result, the impugned letter issued by the first respondent dated 21.05.2015 and the impugned order of the second respondent dated 25.08.2015, are quashed.



and the writ petition stands allowed. In case, any excess payment has been recovered by the second respondent, there shall be a direction to the second respondent herein to forthwith refund the same to the petitioner, atleast within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the impugned order, insofar as it relates to re-fixation of the pay is concerned, shall not be disturbed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

sbn/hvk

To

1. The Director of Municipal Administration,
Chepauk,
Chennai-5.
2. The Commissioner,
Namakkal Municipality,
Namakkal District.

+1cc to Mr.R.Prem Narayan, Advocate SR.No.29871

+1cc to Government Pleader SR.No.30210

W.P.No.1012 of 2016
and
W.M.P.Nos.774 & 775 of 2016

RSV (CO)
GMY (03/08/2021)