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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.3706 OF 2009

AND

M.P.NO.2 OF 2009

C.Ramakrishnan

... Petitioner/Petitioner

.Vs.

1. The Director of Local Fund Audit
Kuralagom, IV Floor,
Chennai - 600108.

2. The Municipal Commissioner
Namakkal Municipality,
Namakkal.

3. The Municipal Commissioner,
Sathyamangalam Municipality,
Sathyamangalam,
Erode District.

... Respondents/Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus calling for the records relating to the order passed by the 2nd Respondent in Na.Ka.No.5990/2007/அ3 dated 17.09.2008 and order passed by the 1st respondent in நிழுஎண்.11131/MPV/2/08, dated 18.11.2008 relating to the reduction of Pensionary benefits of the petitioner from gratuity by reducing the gratuity of Rs.1,09,026 passed in pursuance of the order of the 2nd Respondent in Na.Ka.No.ந.ஒ.ச.(2)/11191/2008 dated 04.07.2008 and in pursuance of the order of 3rd rspondent in ந.க.எண்.3354/2007/C1 dated 05.02.2008 and quash the same consequentially direct the respondents to refund the attached amount gratuity and re-fix the pension on last drawn pay at Rs.8300 + 4150/5900-200-7900/- with 18% interest from the date of retirement.



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For Petitioner : Ms.Kavya Silambanan
For M/s.Silambanan Associates

For Respondents : Mr.S.John J.Raja Singh
(for R1 and R2)

ORDER

The petitioner is a retired pensioner and has hung up his boots as Manager, Namakkal Municipality on 29.02.2008. While this is so, and while the petitioner was settling into retirement, the petitioner received an order of recovery on 04.07.2008 re-fixing scale of pay from the year 1984 till date of retirement, in the basic scale of Rs.8100 + 450- 5900-200-9900/-. A sum of Rs.47,174/- as excess payment of salary, a sum of Rs.1130/- towards surrender of leave and a sum of Rs.40,722/- towards the arrears of time barred debts was directed to be recovered. In all, a sum of Rs.1,09,026/- was ordered to be recovered out of the gratuity after retirement benefits payable to the petitioner. It is the aforesaid order that has come to be challenged before this Court.

2. I need only refer to a judgment of the Supreme Court in the case of State of Punjab and Others Vs. Rafiq Masih (White Washer) etc. (C.A.No.11527 of 2014) dated 18.12.2014, wherein the Supreme Court has laid down guidelines for recoveries to be effected from employees. At paragraph 12, the Supreme Court has categorically stated that no recovery should be initiated as against employees who have retired/superannuated in service, stating specifically at sub-paragraph (iii) of paragraph 12, that recovery from employees, for excess payment stated to have been made for a period in excess of five years before the order of recovery is issued, must not be effected. Paragraph 12 is extracted below:

12. 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).



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(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.

3. The prayer in this writ petition would be directly covered by the aforesaid judgment. That apart, in sub-paragraph (v) of paragraph 12, the Bench has left it open to the Court to determine whether the circumstances in which the recovery is being made in the case on hand was iniquitous or harsh.

4. In the present case, the fixation of pay has been disturbed from 1979 onwards and this has been communicated to the petitioner after his retirement in 2008. I am of the view that the circumstance in the present case are certainly iniquitous, to say the least. This writ petition is allowed and the impugned order is set aside. Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of Local Fund Audit,
Kuralagom, IV Floor,
Chennai - 600108.



2. The Municipal Commissioner
Namakkal Municipality,
Namakkal.

3. The Municipal Commissioner,
Sathyamangalam Municipality,
Sathyamangalam,
Erode District.

+1cc to Mr.A.R.Nixon, Advocate, S.R.No.45038

W.P.NO.3706 OF 2009 AND
MP.NO.2 OF 2009

BS (CO)
PBS/28/09/2021