



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2021

CORAM:

WEB COPY

**THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE
and
THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA**

W.P.(MD) Nos.20825 and 20826 of 2021

and

W.M.P.(MD) Nos.17435, 17436, 17438, 17440, 17442 and 17443 of 2021

M.A.Suresh Kumar ... Petitioner
in W.P(MD).No.20825 of 2021

K.R.Jawaharlal Nehru ... Petitioner
in W.P(MD).No.20826 of 2021
-vs-

1. The Registrar General,
Madras High Court,
Chennai - 105.
2. The Additional Registrar General,
Madras Bench of High Court,
Madurai - 23.
3. The Principal District and Sessions Judge,
Combined District Courts campus,
Madurai - 20.
4. The II Additional District Judge (CBI Cases),
Combined District Courts Campus,
Madurai -20. ... Respondents (in both W.Ps)

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records pertaining to the impugned recovery proceedings as against the petitioners in Roc.No.5/IAW/MB/A/2021-22 dated 07.04.2021 passed by the second respondent and quash the same as illegal and ultravires to the Constitution.

For Petitioner : Mr.Karthik Kanna.N
(in both W.Ps.)
For Respondents : Mr.G.Thalaimutharasu
(in both W.Ps.)



COMMON ORDER

[Order of the Court was made by The Hon'ble ACTING CHIEF JUSTICE]

These writ petitions have been preferred challenging the recovery proceedings pursuant to the order dated 07.04.2021.

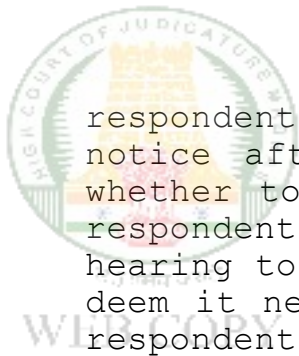
WEB COPY

2. The learned counsel for the petitioners submits that based on the audit objection, a decision was taken by the respondents to make recovery of the excess amount paid to the employees. An internal communication of the respondents has been enclosed to show the proceedings of the recovery of alleged excess payment made to the petitioners. A reference to the show cause notice issued by the respondents has also been given to indicate that virtually, it was not a show cause notice, but a final decision in the hands of the respondents to proceed with recovery. The aforesaid show cause notice was not even served on the petitioners, but it was affixed in the notice board, for which, the petitioners submitted their reply. No order thereupon was passed to make recovery after consideration of the reply given by the petitioners. This Court passed an interim order in favour of the petitioners. Accordingly, recovery was not effected by the respondents. The prayer is to set aside the order/show cause notice in regard to the recovery as it has not been passed after providing an opportunity to the petitioners.

3. The respondents have contested the writ petitions stating that excess amount has been made to the petitioners and it was realized by the audit party. Based on the audit objection, an internal communication was sent to the Principal District Judge to initiate recovery of the excess amount paid to the petitioners. It is thereupon the show cause notice issued on the petitioners before making recovery. A reply to the show cause notice has been received by the respondents who have to take a decision in the aforesaid, but unable to pass orders in view of the *status quo* orders passed by this Court. It is submitted that if the *status quo* order is vacated or liberty is given to them to pass orders, appropriate orders would be passed after providing an opportunity of personal hearing to the petitioners.

4. We have considered the rival submissions and perused the records.

5. The challenge is made to the notice dated 07.04.2021, which is although shown to be a show cause notice, but virtually refers for recovery of amount paid in excess to the petitioners. It is based on the audit objection received by the Department. A reply to the show cause notice was given by the petitioners though alleged not to be a show cause notice. In any case, we do not find any order in furtherance of reply to the show cause notice. Thus, the writ petitions are disposed of, with a direction to the



respondents to take a decision in reference to the show cause notice after considering the reply submitted by the petitioners whether to effect the recovery or not. Before passing orders, the respondents are directed to provide an opportunity of personal hearing to the petitioners and then pass appropriate orders as they deem it necessary in the facts and circumstances of the case. The respondents are directed not to effect recovery till appropriate orders are passed after undertaking the exercise as directed above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

krk/pkn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1. The Registrar General,
Madras High Court, Chennai - 105.
2. The Additional Registrar General,
Madras Bench of High Court, Madurai - 23.
3. The Principal District and Sessions Judge,
Combined District Courts campus,
Madurai - 20.
4. The II Additional District Judge (CBI Cases),
Combined District Courts Campus, Madurai -20.

+1 CC to M/s.N.KARTHIK KANNA, Advocate (SR-40334[F] dated 23/12/2021)

W.P. (MD) Nos.20825 and 20826 of 2021

and

W.M.P. (MD) Nos.17435, 17436, 17438,

17440, 17442 and 17443 of 2021

21.12.2021