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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.12891 of 2015

and

M.P.No.1 of 2015

Suresh Kumar

...Petitioner

-Vs-

1.The Director of Town Panchayats,
Kuralagam Buildings,
Chennai - 108.

2.The Executive Officer,
Vanavasi Town Panchayat,
Vanavasi, Salem District.

...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 proceedings of 2nd respondent dated 12.05.2014 issued in Na.Ka.No.152/2014, quash the same and consequently to restore pay salary as per the proceedings of the 2nd respondent dated 25.02.2013 issued in Na.Ka.No.20/2013 by refunding the already recovered amount from the petitioner till the restoration.

For Petitioner : Mr.P.I.Thirumoorthy

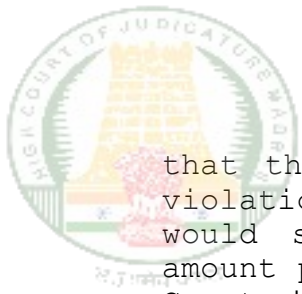
For R1 : Mr.C.Selvaraj,
Additional Government Pleader

For R2 : No Appearance

ORDER

The petitioner, while serving as a Meter Reader in the second respondent Panchayat, was served with a proceedings dated 25.02.2013, whereby his scale of pay was revised to Rs.2650-65-3300-70-4000 from Rs.4000-100-6000, based on an audit objection raised.

2. The learned counsel for the petitioner has raised two grounds challenging the said order. Firstly, he would submit



that the order dated 12.05.2014 is bad in law, since it is in violation of the principles of natural justice. Secondly, he would submit that the respondents cannot recover the excess amount paid, in view of the law laid down by the Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334.

3. The learned Additional Government Pleader appearing for the first respondent placed reliance on the averments in the counter affidavit and submitted that the petitioner was not entitled for the original pay, as per the objections raised by the Audit Committee and therefore, the second respondent cannot be found fault with in passing the impugned proceedings.

4. The Hon'ble Supreme Court in the case of White Washer (supra), has categorically held that recovery from employees, particularly when the mistake of excess payment was on the part of the employer, is impermissible in law. The relevant portion of the order reads as follows:-

"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.



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(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. Admittedly, the petitioner is a Class-IV employee and by applying the ratio laid down by the Hon'ble Supreme in the White Washer's case (supra), recovery of excess payment made, owing to the mistake committed by the respondents, is impermissible in law. Secondly, when the second respondent chose to unilaterally revise the pay scale of the petitioner, there was a duty cast on them to put the petitioner on prior notice, calling for his objections. Such an exercise was not done and therefore, the unilateral revision of the pay scale, without calling for the petitioner's objections in advance, is in violation of the principles of natural justice.

6. In the light of the above observations, the impugned order dated 12.05.2014 passed by the second respondent herein, is quashed. However, the respondents are at liberty to put the petitioner on prior notice, calling for his objections on the proposed revision of his pay scale. In case the respondents intend to proceed for revision, the objections, that may be put forth by the petitioner herein, shall be considered prior to taking any final decision. It is made clear that the excess payment already made to the petitioner, shall not be recovered, in view of the observations made in this order, and the respondents shall also continue to pay the petitioner with the original scale of pay, prior to the impugned revision.

7. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

hvk

To:

1.The Director of Town Panchayats,
Kuralagam Buildings,
Chennai - 108.



2.The Executive Officer,
Vanavasi Town Panchayat,
Vanavasi, Salem District.

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+1cc to M/s.P.I.Thirumoorthy, Advocate, S.R.No.5899

+1cc to the Government Pleader, S.R.No.6465

W.P.No.12891 of 2015

and

M.P.No.1 of 2015

KSM(CO)

SB(14/02/2022)