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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.03.2022

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

W.P.No.16564 of 2013

and

M.P.No.1 of 2014

R.Kanagamani

.. Petitioner

Vs.

1. The Director of Municipal Administration,
Local Fund Audit,
Kuralagom, Chennai - 108.

2. The Commissioner,
Erode Municipality,
Erode.

..Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for records relating to the Proceedings in Na.Ka.No.2497/06/C1, dated 31.05.2006 and consequently direct the respondents to refund the attached amount of Rs.37,995/- along with 12% interest from 31.05.2006 till the date of payment.

For Petitioner : Mr.A.R.Nixon

For R1 : Mr.T.Chezhiyan
Additional Government Pleader

For R2 : Mr.M.Rajamathivanan

ORDER

The petitioner's husband who had retired from the post of Revenue Assistant on 31.05.2006, was issued with a Recovery Order, dated 31.05.2006 stating that a sum of Rs.31,244/- was mistakenly paid in excess while fixing his Selection Grade Pay Scale and that a sum of Rs.7,845/- is a loss to the Government owing to the employees inaction in collecting the taxes in time. The impugned order of recovery is liable to be quashed on two grounds:



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(i) Firstly, while the second respondent herein has passed the impugned order, dated 31.05.2006 seeking for recovery, no prior notice was given to the employee and hence the order itself is in violation of the principles of natural justice.

(ii) Secondly, the Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334, had held that, recovery from the employees who are due to retire within one year from the order of recovery, is impermissible in law, when such excess payments have been mistakenly paid by the employer.

2. Admittedly, a sum of Rs.31,244/- is a mistake in fixation of the Pay Scale by the respondents and the excess payment made owing to such mistakes, cannot be recovered by applying the ratio laid down in White Washer's (Supra). Insofar as the amount of Rs.7,845/- is concerned, the same also cannot be sustained, since the employee was not put on prior notice.

3. The learned Standing Counsel for the second respondent, submitted that the Hon'ble Supreme Court in the case of High Court of Punjab and Haryana Vs. Jagdev Singh reported in (2016) 14 Supreme Court Cases 267, had held that recovery from retired employees is permissible. Perusal of the order of the Hon'ble Supreme Court, reveals that when recoveries are sought to be made after putting the employee on clear notice, the same can be sustained. It is not in dispute that the Government Employee in the present case was not put on notice and therefore, the ratio laid down in Jagdev Singh (Supra), will not be applicable to the present case. As such, I do not find any legality in the action initiated by the respondents for recovery.

4. *It is now stated that the amount of Rs.37,995/- has already been recovered from the DCRG benefits of the late employee. Accordingly, there shall be a direction to the respondents to forthwith the refund of a sum of Rs.37,995/- together with interest at the rate of 12% per annum (Compounded annually) as per Section 45A of the Tamil Nadu Pension Rules, from 31.05.2006, till the date of actual disbursement. The respondents shall endeavour to pass appropriate orders and disburse the funds, atleast within a period of six (6) weeks from the date of receipt of a copy of this order.



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5. Accordingly, the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)
04/04/2022

***(Corrected as per order of
this Court Dated 26/04/2022)**

Sd/-

Assistant Registrar (CS-V)
04/04/2022

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Director of Municipal Administration,
Local Fund Audit,
Kuralagom, Chennai - 108.
2. The Commissioner,
Erode Municipality,
Erode.

***To be Substituted
the order already
despatched on
21/04/2022**

+1cc to M/s.A.R.Nixon, Advocate, S.R.No.17513
+1cc to M/s.M.Rajamathivanan, Advocate, S.R.No.16950
+1cc to the Government Pleader, S.R.No.17786

W.P.No.16564 of 2013

SKM(CO)
SU(07/04/2022)
CT(02/05/2022)