



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

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CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.1580 of 2016

and

W.M.P.Nos.12494, 1343 & 1344 of 2016

V.Thiruvalluvan

...Petitioner

Vs.

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

2. The Commissioner,
Namakkal Municipality,
Namakkal District.

...Respondents

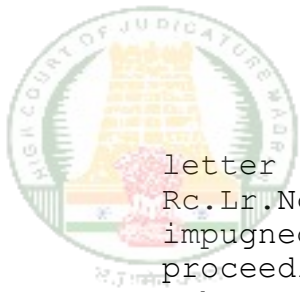
PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records in pursuant to the impugned letter issued by the first respondent in proceedings Rc.Lr.No.45529/F3/2010 dated 21.05.2015 and the consequential impugned order of refixation issued by the 2nd 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 2nd respondent in proceeding Na.Ka.No.3930/2015/C1 dated 26.11.2015 and quash these orders.

For petitioner : Ms.Swathi Subramanian
For M/s.R.Prem Narayan

For Respondents: Mr.C.Kathiravan, SGP for R1
Mr.M.Rajamathivanan for R2

ORDER

This writ petition has been filed to issue a Writ of Certiorari, to call for the records in pursuant to the impugned



letter issued by the first respondent in proceedings Rc.Lr.No.45529/F3/2010 dated 21.05.2015 and the consequential impugned order of refixation issued by the 2nd 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 2nd respondent in proceeding Na.Ka.No.3930/2015/C1 dated 26.11.2015 and quash these orders.

2.The petitioner was working as Gardener in Namakkal Municipality. Based on G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010, the petitioner was re-designated as unskilled worker and was receiving the revised scale of pay. Contrary to the above said Government Order, the first respondent issued instructions vide proceedings dated 21.05.2015, stating that the name of 36 posts listed in Annexure B are cancelled from the category of trade posts and deleted those 36 categories listed as trade posts in letter dated 01.10.2012. Pursuant to the said instructions, the revised scale of pay of the petitioner was reduced and consequently, recovery order was also passed vide proceedings dated 26.11.2015. Challenging the same, the petitioner is before this Court.

3.Today when the matter is taken up for hearing, the learned counsel for the petitioner would submit on instruction that she would confine her submission on the aspect of recovery alone, as a consequence of the revision of pay scale, retrospectively. She would submit that as per the landmark decision of the Hon'ble Supreme Court, followed by this Court in multitude of its decisions, no recovery could be made from the salaries of Group C & D employees, if excess payments were made not on account of any misrepresentation. The decision of this Court following the Supreme Court dictum on the aspect of recovery, squarely applies to this case.

4.In consideration of the above submission, this Court finds that so long as the respondents have no case that the petitioner was primarily responsible for fixing the pay scale to the petitioner, they are not entitled to recover the excess amount paid to the petitioner. Therefore, this Court is of the view that the respondents were not justified in passing the impugned order of recovery and thereby effected recovery, unjustly.

5.The Hon'ble Supreme Court of India in its decision in the case of State of Punjab and others Vs. Rafiq Masih and others, reported in (2015) 4 SCC 334, has held in paragraph No.18 as follows:-

"18. It is not possible to postulate all situations of hardship, which would govern employees



10. With the above direction, the writ petition is allowed to the limited extent. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gsk

To

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

+1cc to M/s.R.Prem Narayan, Advocate, S.R.No.23317

+1cc to the Government Pleader, S.R.No.23629

W.P.No.1580 of 2016
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AJS (CO)
RGA (20/04/2022)