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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.4713 of 2022

and

WMP.No.4826 of 2022

1.S.Karthikeyan
2.Dhandapani
3.N.Prabhakaran
4.K.Sakthivel
5.B.Ganesh
6.D.Sivasantosh
7.K.Suresh
8.P.Vivekanandan
9.N.Jayakumar
10.A.Sivakumar
11.S.Thiyagarajan
12.R.Senthilkumaran

..Petitioners

vs.

1. The Additional Chief Secretary to Government,
Home (Police 17) Department,
Fort St.George, Chennai-9.
2. The Additional Chief Secretary to Government,
Finance (Pay Cell) Department,
Fort St.George, Chennai-9.
3. The Director of Fire & Rescue Services Department,
Pantheon Road, Egmore,
Chennai-8.
4. The District Officer,
Fire & Rescue Services Department,
Nagapattinam,
Nagapattinam District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the fourth respondent in connection with the impugned order passed by him



in Na.Ka.No.7972/B1/2021 DO No.83/2021 dated 13.10.2021 and quash the same insofar as the petitioners are concerned and direct the respondents to reimburse the salary recovered from them from the month of December, 2021 within a reasonable time.

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For Petitioners : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondent : Mr.M.Bindran
Additional Government Pleader

O R D E R

The petitioners, challenging the impugned order of recovery passed by the fourth respondent dated 13.10.2021 and for a consequential direction to the respondents to reimburse the salary recovered from them from the month of December, 2021 within a reasonable time, has filed the present writ petition.

2. The case of the petitioners is that they are serving as Leading Fireman in various Fire and Rescue Stations in Nagapattinam and Mayiladuthurai Districts and vide impugned order dated 13.10.2010, their salary has been re-fixed and recovery has been ordered by the fourth respondent for a sum of Rs.50,726/- without any show cause notice or affording any opportunity to the petitioners. Hence, challenging the same, the petitioners have filed the present writ petition.

3. Mr.K.Venkataramani, learned Senior Counsel for the petitioners would submit that the impugned order of recovery has been passed without issuing any show cause notice or providing any opportunity to the petitioners to submit their explanation and there is a clear violation of principles of natural justice and on that ground, the impugned order is liable to be set aside. It is further submitted by the learned Senior Counsel for the petitioners that so far two instalments were recovered from the petitioners' salary.

4. The learned Additional Government pleader has drawn the attention of this Court to the counter affidavit of the fourth respondent dated 16.03.2022, wherein it has been stated that the question of issuance of show cause notice to the petitioners does not arise, since the petitioners themselves had given their option for exercising recovery without any show cause notice, if the pay fixed was found incorrect. It is further stated in the counter affidavit that after passing the order of recovery, the petitioners have given a representation stating that the excess payment paid to the petitioners i.e., Rs.50726/- can be recovered from the petitioners. The learned Additional



Government Pleader has also relied upon the order dated 09.03.2022 in W.P.(MD)No.434 of 2022, wherein in an identical issue, this Court has dismissed the writ petition.

5. This Court has considered the submissions made and also perused the materials on record.

6. It is the stand of the fourth respondent in the counter affidavit that the question of issuance of show cause notice to the petitioners does not arise, since the petitioners themselves given their option for exercising recovery without any show cause notice, if the pay fixed was found incorrect. This Court is of the view that even though the petitioners have given undertaking before the respondents that if any excess amount is paid, it can be adjusted from future payments, the respondents ought to have granted opportunity to the petitioners to put forth their defence by way of explanation before effecting recovery and therefore, there is a clear violation of principles of natural justice.

7. In view of the above, the impugned order of recovery in Na.Ka.No.7972/B1/2021 DO No.83/2021 dated 13.10.2021 is quashed and the matter is remitted back to the fourth respondent for fresh consideration, who, after affording opportunity to the petitioners, shall pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that recovery cannot be effected until final orders are passed by the fourth respondent afresh and if any amount already recovered, the same shall not be refunded to the petitioners, until fresh orders are passed by the fourth respondent.

8. The Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Jvm

To

1.The Additional Chief Secretary to Government,
Home (Police 17) Department,
Fort St.George, Chennai-9.



2. The Additional Chief Secretary to Government,
Finance (Pay Cell) Department,
Fort St.George, Chennai-9.

3. The Director of Fire & Rescue Services Department,
Pantheon Road, Egmore, Chennai-8.

4. The District Officer,
Fire & Rescue Services Department,
Nagapattinam, Nagapattinam District.

+lcc to Mr.M.Muthappan, Advocate, S.R.No.21149

+lcc to the Special Government Pleader, S.R.No.21331

W.P.No.4713 of 2022

SKM[co]
NSK 26/04/2022