



N THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.03.2022

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.19134 & 19135 of 2016

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W.M.P.Nos.16665, 16666, 16667 & 16668 of 2016

M.Balan ...Petitioner in W.P.No.19134/2016

M.Muthammal ...Petitioner in W.P.No.19135/2016

Vs.

1.The Director of Municipal Administration,
Chepauk, Chennai - 05.

2.The Commissioner,
Mettur Municipality,
Mettur, Salem District.

...Respondents in both the WPs

COMMON PRAYER: Petitions 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 issued by the 2nd respondent in proceedings Na.Ka.No.3446/2015/H-1 dated 29.04.2016 and quash these orders.

For Petitioner .. Ms.Swathi Subramaniam
for Mr.R.Prem Narayanan

For Respondents.. Mr.L.S.M.Hasan Fizal,
Additional Government Pleader
(for R.1)
Mr.S.Gunasekaran,
Additional Government Pleader
(for R.2)

...in both WPs

COMMON ORDER

The case of the petitioners is that they were working as Farm Worker in the second respondent / municipality and retired from services on attaining age of superannuation. Before their retirement, in terms of G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010, the petitioners were granted revised scale of pay. The Government Order was issued pursuant to the recommendations of One Man Commission.



2. In terms of the revised pay scale, the petitioners were fitted into common scale of pay i.e., 5,200 - 20,200 in the grade pay of 1,900/- with effect from 01.01.2006, notional and monetary benefits from 01.08.2010. All the Municipalities were directed to implement the Government Order. The petitioners' post also came to be re-designated as unskilled workers in the course of the above Government Order dated 26.08.2010.

3. Subsequently, vide proceedings dated 21.05.2015, the cancellation orders were issued in respect of 36 posts listed in the Annexure - B, which included the petitioners herein and consequently order of recovery of the excess payment made on the basis of the revised scale of pay was ordered to be recovered. Challenging the same, the petitioners are before this Court.

4. When the matter is taken up for hearing, the learned counsel for the petitioners would submit that she would confine his relief only to the recovery aspect alone and she is not pressing the main relief, challenging the revision of pay scale as such.

5. In this regard, the learned counsel would also refer to off repeated case law laid down by the Hon'ble Supreme Court in the case of Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334. The Hon'ble Supreme Court has summed up the law as under in paragraph 18 of the order;

"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



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though he should have rightfully been required to work against an inferior post.

(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."

6. The learned counsel would refer to a recent decision of this Court in W.P.No.1008 of 2016 dated 28.06.2021 in the case of M.Viswanathan Vs. The Director of Municipal Administration allowing the writ petition under similar circumstances. The relevant paragraphs of the above said order are extracted hereunder;

"5. A mere justification of the action of the second respondent, which was based on the first respondent's instructions, may not be sufficient to permit them to recover the alleged excess payment made. As rightly pointed out by the learned counsel for the petitioner, the Hon'ble Supreme Court in the White Washer's case (supra), had summarised certain situations wherein, recoveries from Class IV employees and recoveries where the excess payments have been made for a period in excess of five years, were held as 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



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rightfully been required to work against an inferior post.

(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."

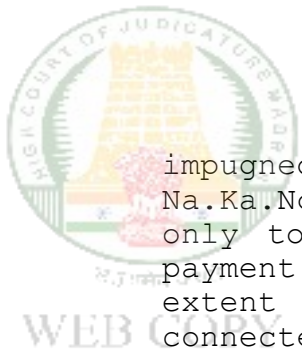
6. The Government had also chose it appropriate to abide by the orders of the Hon'ble Supreme Court in White Washer's case (supra) and consequently had issued G.O.Ms.No.286 dated 28.08.2018, reiterating the findings of the Hon'ble Apex Court, which has been extracted above.

7. In this background, I do not find any justification on the part of the second respondent in ordering for recovery of the alleged excess payment. In view of the decision laid down by the Hon'ble Apex Court in White Washer's case (supra) and the subsequent Government Order in G.O.Ms.No.286 dated 28.08.2018, the impugned order cannot be sustained.

8. In the result, the impugned letter issued by the first respondent dated 21.05.2015 and the impugned order passed by the second respondent dated 25.08.2015, are quashed and the writ petition stands allowed. In case, any excess payment has been recovered by the second respondent, there shall be a direction to the second respondent herein to forthwith refund the same to the petitioner, atleast within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the impugned order, insofar as it relates to re-fixation of the pay is concerned, shall not be disturbed. No costs. Consequently, connected miscellaneous petitions are closed."

7. Mr.G.Ameedius, learned Government Advocate appeared for the first respondent in both the Writ Petitions, would have no objection if the recovery portion alone is interfered with. In any event, considering the settled legal principle on the issue that the petitioners herein were not at fault at all, for the excess payment made due to wrong revision of pay scale, the respondents are not entitled to recover on that account. Since the relief is confined only to the aspect of recovery alone and the main relief of challenging the revision of pay scale per se is not pressed, the writ petitions are liable to be allowed to the limited extent.

8. In the above said circumstances, the impugned letter issued by the first respondent in proceedings



impugned order issued by the second respondent in proceedings Na.Ka.No.3446/2015/H-1 dated 29.04.2016 are hereby set aside only to the extent that were seeking to recover the excess payment made. The Writ Petitions are allowed to the limited extent as indicated above. No costs. Consequently the connected miscellaneous petitions stand closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrm
To

1.The Director of Municipal Administration,
Chepauk, Chennai - 05.

2.The Commissioner,
Mettur Municipality,
Mettur, Salem District.

+1 cc to M/s.P.Srividhya, Advocate Sr.NO. 15272
+1 cc to Mr.S.Gunasekaran, Advocate Sr.NO.15945
+1 cc to Mr.R.Prem Narayanan, Advocate Sr.NO. 15593
+1 cc to Government Pleader Sr.NO. 15901

W.P.No.19134 & 19135 of 2016

JP(CO)
A.SK(29/03/2022)