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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.03.2022

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THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.NO.26781 OF 2016  
& W.M.P.NOS.23031 TO 23033 OF 2016

S.Arumugam

...Petitioner

Vs.

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

2.The Commissioner,  
Srikali Municipality,  
Srikali, Nagapattinam District.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus, 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 second respondent in proceedings Na.Ka.No.6692/2015/C-1 dated 29.06.2016 insofar as it imposes the recovery of a sum of Rs.1,12,908/- from the pensionary benefit of the petitioner and quash these orders and consequently direct the respondents to fix the pension of the petitioner in the scale of pay of Rs.5200-20200 + G.P.1900 and to repay the withheld amount of Rs.1,12,908/-.

For Petitioner : Ms.Swathi Subramaniam  
for M/s.R.Prem Narayanan

For Respondents : Mr.G.Ameedius,  
Government Advocate (for R.1)  
Mr.P.Srinivas (for R.2)

ORDER

The case of the petitioner is that he was working as Park Watchman in the second respondent / municipality and retired from service on attaining age of superannuation on 30.06.2016. Before his retirement, in terms of G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010, the petitioner was granted a





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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 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:

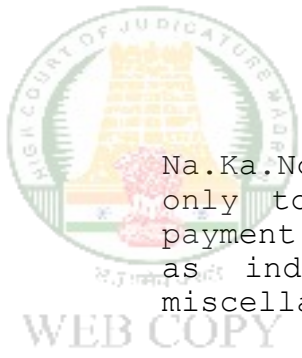
(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(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





Na.Ka.No.6692/2015/C-1 dated 29.06.2016 are hereby set aside only to the extent that were seeking to recover the excess payment made. The Writ Petition is allowed to the limited extent as indicated above. No costs. Consequently the connected miscellaneous petitions stand closed.

Sd/-  
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

mrm

To

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

2.The Commissioner,  
Srikali Municipality,  
Srikali, Nagapattinam District.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.16093

+1cc to Mr.R.Prem Narayan, Advocate, S.R.No.15594

+1cc to the Government Pleader, S.R.No.15900

W.P.No.26781 of 2016

GPL(CO)  
RVM(29/03/2022)