



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.26901 of 2016

and

W.M.P.Nos.23126 & 23127 of 2016

1.K.Venkatraman
2.J.Kaja Kamal
3.P.Vijayan

... Petitioners

Vs.

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

2. The commissioner,
Sirkali Municipality,
Sirkali, Nagapattinam 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 quash the same.

For petitioners: Mr.R.Prem Narayan

For Respondents: Mr.R.U.Dinesh Rajkumar, GA for R1
Mr.P.Srinivas 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 quash the same.

2. The petitioners were working as Park Watchman and water Supply Cleaner in Sirkali Municipality. Based on G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010, the petitioners were re-designated as unskilled workers and were 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 petitioners were reduced and recovery is also imposed. Challenging the same, the petitioners are before this Court.

3. Today when the matter is taken up for hearing, the learned counsel for the petitioners would submit that the petitioners' pay was sought to be revised to their detriment and he confines his argument on the aspect of recovery alone.

4. So long as the respondents have no case that the petitioners were primarily responsible for fixing the pay scale to the petitioners, they are not entitled to recover the amount. Therefore, this Court is of the view that the respondents were not justified in passing the impugned order.

5. In fact, 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 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 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 issue raised in the present writ petition is squarely covered by the decision of the Hon'ble Supreme Court of India, since there was no misrepresentation on the part of the petitioners, facilitating the payment of higher salary due. In the said circumstances, the impugned order of recovery is without justification and the same cannot be countenanced in law.

7. In the result, the impugned order passed by the first respondent in proceedings Rc.Lr.No.45529/F3/2010 dated 21.05.2015, is hereby set aside in respect of recovery alone. The respondents are directed to refund the recovered amount to the petitioners as expeditiously as possible and in any case, within a period of two months from the date of receipt of a copy of this order.

8. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Director of Municipal Administration,
Chepauk, Chennai-5.
2. The commissioner,
Sirkali Municipality,
Sirkali, Nagapattinam District.

+1cc to Mr.Prem narayan, Advocate, S.R.No.19201

+1cc to the Government Pleader, S.R.No.19141

W.P.No.26901 of 2016 and
W.M.P.Nos.23126 & 23127 of 2016

MT(CO)
SU(07/04/2022)