



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.28029 of 2016

S.Sekar

... Petitioner

Vs.

The Commissioner,
Panrutti Municipality,
Cuddalore District.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the orders pertaining to the proceedings of the respondent dated 25.05.2016 in No.Na.Ka.No.299/2016/C1 and quash the same and consequently, direct the respondent to release/pay the earned leave amount of the petitioner forthwith.

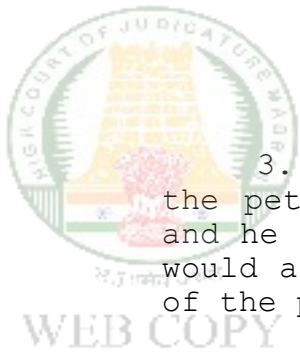
For petitioner : Mr.M.S.Soundara Rajan

For Respondent : Mr.G.Ameedius, GA

ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the orders pertaining to the proceedings of the respondent dated 25.05.2016 in No.Na.Ka.No.299/2016/C1 and quash the same and consequently, direct the respondent to release/pay the earned leave amount of the petitioner forthwith.

2. The petitioner was working as Revenue Assistant at Panruti Municipality. On attaining the age of superannuation, he retired from service on 30.06.2016. According to him, at the verge of his retirement, the respondent issued the impugned order dated 25.05.2016, on the ground that pay scale has been wrongly fixed and excess payment of Rs.2,02,866/- has been paid to the petitioner. Therefore, the respondent ordered to recover the same from the earned leave which is payable to the petitioner on his retirement on 30.06.2016. Challenging the same, the petitioner is before this Court.



3. The learned counsel for the petitioner would submit that the petitioner's pay was sought to be revised to his detriment and he confines his argument on the aspect of recovery alone. He would also submit that there is no misrepresentation on the part of the petitioner when the pay was originally came to be fixed.

4. The petitioner was in service under the respondent till 30.06.2016. The respondent has no case that the petitioner was instrumental in fixing his pay. Similarly, the respondent has no case that on account of his misrepresentation, he was given excess salary. It was only by way of the impugned order, the respondent has come up with a case that a sum of Rs.2,02,866/- was paid to the petitioner in excess of the actual entitlement. So long as the respondent has no case that the petitioner was primarily responsible for fixing the pay scale to the petitioner, he is not entitled to recover the amount. Therefore, this Court is of the view that the respondent was 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.



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(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 petitioner, facilitating the payment of higher salary due. In the said circumstances, the impugned order of recovery of Rs.2,02,866/- is without justification and the same cannot be countenanced in law.

7. In the result, the impugned order dated 25.05.2016 in No.Na.Ka.No.299/2016/C1, passed by the respondent is hereby set aside. The respondent is directed to refund the amount of Rs.2,02,866/- to the petitioner 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.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Commissioner,
Panrutti Municipality,
Cuddalore District.

+1cc to Mr.M.S.Soundara Rajan, Advocate, S.R.No.16501
+1cc to the Government Pleader, S.R.No.17013

W.P.No.28029 of 2016

MG[co]
NSK 28/03/2022