IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.3.2022

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.17761 of 2020
and
W.M.P.No.22021 and 22022 of 2020

1 V.Soundrarajan ...Petitioner

Vs.

1 The Commissioner of Municipal Administration,
Chepauk, Chennai 5.

2 The Director,
Local Fund Audit, Integrated Complex for
Finance Department, 4th Floor, Nandanam,
Saidapet, Chennai 35.

3 The Regional Director of
Municipal Administration, Vellore-12.

4 The Commissioner,
Villupuram Municipality, Villupuram.
...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 Na. Ka. No. 8667/ 2017/ C1 dated 29.3.2019 on the file of the 4th respondent and the consequential order dated 18.12.2019 passed by the 2nd respondent in Ne. Mu. No. 14769/ MPV (4)/ 2019 and quash the same and consequently direct the 4th respondent to refund the payment of Rs. 12,02,775/- recovered from the D.C.R.G. of the petitioner and forbear the respondents to deduct any amount of petitioner pensionary benefits.

For Petitioner	:	Mr.Vijay Mehansh for Mr.S.Prakash
For Respondents 1to 3	:	Mr.A.M.Iyya Durai, G.A.
For Respondent No.4	:	Mr.V.Jayaprakash Narayanan

ORDER

The petitioner while working as Revenue Officer, Class II in the 4th Respondent Municipality retired from service on superannuation on 31.3.2019. According to the petitioner, the respondent has obtained an undertaking affidavit from the petitioner that he has no objection for deduction of the amount if any on recovery proceedings of the respondent. The petitioner has submitted an undertaking affidavit on 29.3.2019 and he was permitted to retire from service. After the retirement, the respondent recovered the amount in the month of February, 2020. According to the petitioner, no opportunity was granted to the petitioner for recovery of the said amount. Admittedly, the undertaking affidavit was given at the time of submitting papers in respect of retirement benefits to the petitioner at the verge of retirement. Based on the said undertaking, the respondent has withheld the said amount from the petitioner. Hence, the petitioner has filed the instant writ petition before this Court.

2. According to the petitioner, the respondent has not provided an opportunity to the petitioner and also no reason for recovering the said amount and the same has been directly recovered by the respondent after the lapse of 11 months. The said action of the respondent is illegal, discriminatory and violation of principles of natural justice and therefore, the impugned order is liable to be set aside.

3. Counter affidavit has been filed by the fourth respondent wherein it is stated that the petitioner was permitted to retire from service on condition that a sum of Rs.12,02,775/- will be deducted from his D.C.R.G. Account due to audit objection raised in para 14 and 15 of the audit report for a sum of Rs.3,53,435/- during his tenure 2016-17 and a sum of Rs.8,49,340/- during his tenure for the period 2017-2018 respectively. Pursuant to the undertaking given by the petitioner, the respondent recovered a sum of Rs.12,02,775/- from the D.C.R.G. due to the petitioner. Now, the petitioner cannot dispute the recovery of the said amount.

4. The respondent did not pass any order for recovery of the said amount and based on the undertaking affidavit submitted by the petitioner, the respondent recovered a sum of Rs.12,02,775/-. The petitioner has raised a specific ground that the respondent recovered the said amount without giving an opportunity to the petitioner. Therefore, the respondent

violated the principles of natural justice. Therefore, this Court is of the view that the respondent has recovered the said amount without passing any orders to withheld the said amount

5. In view of the above, this Court is inclined to pass the following order:

(i) The respondent is directed to serve show cause notice to the petitioner assigning reason, within a period of four weeks from the date of receipt of copy of the order.

(ii) On receipt of such show cause notice, the petitioner has to make detailed explanation to the Commissioner of Municipality, fourth respondent herein within a period of eight weeks thereafter.

(iii) After submitting explanation by the petitioner, the respondent Municipality has to pass final order as expeditiously as possible preferably within a period of six weeks thereafter.

(iv) In case, the petitioner succeeds, the respondent has to pay interest as per the provisions of the Act.

6 With the above directions, the writ petition is disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1 The Commissioner of Municipal Administration,
Chepauk, Chennai 5.

2 The Director,
Local Fund Audit,
Integrated Complex for Finance Dept.,
4th Floor, Nandanam,
Saidapet, Chennai 35.

3 The Regional Director of Municipal Administration,
Vellore-12.

4 The Commissioner,
Villupuram Municipality,
Villupuram.

+1cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.20942
+2ccs to M/s.V.Janaranjani, Advocate, S.R.No.20701
+1cc to the Special Government Pleader, S.R.No.21065

W.P.No.17761 of 2020
and
W.M.P.No.22010 of 2020

SKM[co]
NSK 12/04/2022