



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 21.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.19185 of 2018
and
W.M.P.No.22563 of 2018

S.Nallasamy

...Petitioner

Vs

The Bhavani Municipality,
Rep. by the Commissioner (i/c) cum
Municipal Engineer,
Bhavani, Erode District.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.776/2018/C1 dated 31.05.2018 on the file of the respondent, quash the same and consequently direct the respondent to refund the amount already recovered from the petitioner's salary.

For Petitioner : Mr.P.Rajavel

For Respondent : Mr.P.Srinivas, Standing Counsel

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. According to the respondent, the petitioner, who was working as Helper (Water Works Overseer/Water Supply) in the respondent Municipality, was wrongly put under a pay scale in a higher rate from the year 2010 onwards. As per the subsequent instructions of the Commissioner of Municipal Administration, the pay scale of the petitioner was re-fixed. These lapses were pointed out in the Audit Report for the year 2015-2016 and consequently, the respondent had sought to recover a sum of Rs.2,29,148/- in 36 monthly installments of Rs.6,365/-. Aggrieved against such an action, the present writ petition has been filed.



3. The Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334, had held that excess payments, which have been mistakenly paid by the employer to the employees belonging to Class-III and Class-IV (or Group-C and Group-D service), is impermissible in law. Admittedly, the petitioner herein was in Group-C service, since he was in the post of Helper in the Water Works of the Municipality. By applying the ratio laid down in the White Washer's case (supra), the action now initiated by the respondent to recover the sum of Rs.2,29,148/- cannot be sustained.

4. In the light of the above discussion, the impugned order passed by the respondent in Na.Ka.No.776/2018/C1 dated 31.05.2018, is quashed. Consequently, the respondent shall refrain from recovering any amount pursuant to the impugned order dated 31.05.2018 from the petitioner's salary and in case any recovery has already been made, the same shall be refunded to the petitioner forthwith, in any event, within a period of two (2) weeks from the date of receipt of a copy of this order.

5. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

Hvk

To

The Commissioner (i/c) cum
The Municipal Engineer,
The Bhavani Municipality,
Bhavani, Erode District.

+1cc to Mr.P.Rajavel, Advocate, S.R.No.3783

+1cc to Mr.P.Srinivas, Advocate, S.R.No.4134

W.P.No.19185 of 2018

and

W.M.P.No.22563 of 2018

MT[co]

NSK 08/02/2022