



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 28.01.2022
DELIVERED ON : 24.02.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
CONT.P (MD)No.1553, 1554 and 1555 of 2021

CONT.P (MD)No.1553 of 2021

T.Jayaraman ... Petitioner/Petitioner
vs
Mr.Ravichandran
Commissioner,
Karur Municipality,
Karur District. ... Contemnor/Respondent No.4

PRAYER: Petition filed under Section 11 of the Contempt of Court Act, 1971, to punish the contemnor / 4th respondent for his willful disobedience of the order passed by the Court in W.P. (MD) No.21702 of 2015, dated 24.07.2019.

Prayer in WP(MD). 21702 OF 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order in Rc.Lr.No.45529/F3/2010 dated 21.5.2015 passed by the 3rd Respondent and consequential order in Na.Ka.No.E4/7318/2015 dated 17.8.2015 passed by the 4th Respondent and quash the same

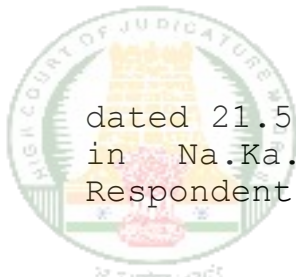
CONT.P (MD)No.1554 of 2021

K. Ramakrishnan ...Petitioner/Petitioner
vs
Mr.Ravichandran
Commissioner,
Karur Municipality,
Karur District. ... Contemnor/Respondent No.4

PRAYER: Petition filed under under Section 11 of the Contempt of Court Act, 1971, to punish the contemnor/4th respondent for his willful disobedience of the order passed by the Court in W.P.(MD) No.21711 of 2015, dated 24.07.2019.

Prayer in WP(MD). 21711 OF 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order in Rc.Lr.No.45529/F3/2010



dated 21.5.2015 passed by the 3rd Respondent and consequential order in Na.Ka.No.E4/7318/2015 dated 17.8.2015 passed by the 4th Respondent and quash the same.

CONT.P(MD)No.1555 of 2021

Arivazhan

...Petitioner/Petitioner

vs

Mr.Ravichandran
Commissioner,
Karur Municipality,
Karur District.

... Contemnor/Respondent No.4

***(Respondent name amended, vide Court order,
dated 03.01.2022 in CONT.P(MD)No.1553 to 1555 of 2021
by SSYJ)***

PRAYER: Petition filed under under Section 11 of the Contempt of Court Act, 1971, to punish the contemnor/4th respondent for his willful disobedience of the order passed by the Court in W.P.(MD) No.21709 of 2015, dated 24.07.2019.

Prayer in WP(MD). 21709 OF 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order in Rc.Lr.No.45529/F3/2010 dated 21.5.2015 passed by the 3rd Respondent and consequential order in Na.Ka.No.E4/7318/2015 dated 17.8.2015 passed by the 4th Respondent and quash the same.

(In all Contempt Petitions)

For Petitioners : Mr.S.Gokul Raj

For Respondents : Mr.Veera Kathiravan

Additional Advocate General, Assisted by
Mr.K.Balasubramani

O R D E R

The three contempt petitions in CONT.P. (MD)Nos.1553, 1554, 1555 of 2021 was filed alleging disobedience of the order passed in W.P.(MD)No.21702 of 2015, 21711 of 2015 and 21709 of 2015. This Court vide order, dated 24.07.2019, in a batch of writ petitions has ordered as under:

"7. In view of the order passed by this Court as stated supra, this Court is inclined to pass the following order:

<https://hcservices.ecourts.gov.in/hcservices/>



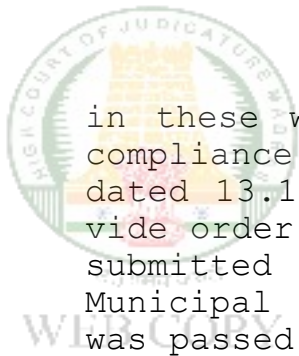
(i) *The impugned order of recovery passed by the third respondent in Rc.Lr.No.45529/F3/2010, dated 21.05.2015, is quashed.*

(ii) *The Correct fixation of pay as applicable to the writ petitioners is to be effected and pension permissible is to be paid in accordance with the pay rules and the Government Orders in force.*

(iii) *The Official respondents are directed to conduct an enquiry in respect of such excess payments made to the writ petitioners and in the event of any error, lapse, negligence or dereliction of duty, then, all suitable actions are to be initiated against all the Officials, who all are responsible and accountable for compensation the financial loss occurred to the State Exchequer by imposing recovery proportionately".*

2. This Court has quashed the impugned recovery order, dated 21.05.2015, thereafter, directed the respondents to carry out the correct fixation of pay as applicable to the writ petitioners shall be effected and pension permissible shall be paid in accordance with the pay rules and Government Orders in force. The grievance of the petitioner is that the Writ Court has held in para 5 that the writ petitioners are serving in Grade-IV posts and therefore, even in case of excess payment of salary on erroneous fixation of scale of pay, the said amount cannot be revoked from the Group-3 and Group-4 employees. Since the writ petitioners are working as Grade-IV employees, excess salary already paid to the writ petitioners cannot be recovered by the respondents. Thereafter, the respondents have passed an order, dated 07.10.2020, wherein, it has been stated that in G.O.Ms.No.286, Finance and Pension Department, dated 28.08.2018, the excess amount paid to the employees belonging to Class C and D need not be recovered. Therefore, the excess amount in pay fixation shall be dealt with in accordance to G.O. Ms. No. 286, Finance and Pension Department and the excess amount need not be recovered from the employees. The allegation of the petitioner is, in spite of the order passed by this Court on 07.10.2020, the respondents / contemnors have passed an order in Na. Ka. No. E4 / 12008 / 2015, dated 01.11.2016, thereby, recovered Rs.81,007/- as salary paid in excess for the period from 01.08.2010 to 31.07.2015. Since the respondents' order is against the order passed in the writ petition and the petitioner alleges willful disobedience by the respondents / contemnors.

3. The learned Additional Advocate General appearing for contemnors / respondents had submitted that the respondents aggrieved over the orders passed in the writ petition has preferred a writ appeal in W.A. (SR) No. 11040 of 2020. Before the Division Bench, the appellants / respondents submitted that nothing survives

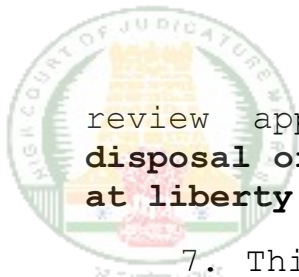


in these writ appeals, in view of the Government Order passed in compliance of the order of learned Single Judge in G.O.Ms.No.177, dated 13.10.2016 and all the writ appeals were rejected and closed vide order dated 18.01.2021. The learned Additional Advocate General submitted that the said G.O.Ms.No.177 has nothing to do with the Municipal Administration Department and the said Government Order was passed in the Educational Department. Therefore, the respondents / contemnors are preferring a Review petition or any other petition as applicable and the respondents are taking steps to review the said order.

4. The learned Additional Advocate General submitted that this issue arose due to the misinterpretation of the G.O.Ms.No.234, dated 01.01.2006, wherein, under the Sixth Pay Commission, there was a revision of pay and re-organization of the skilled, semi-skilled and un-skilled employees on par with the ITI employees. This issue is affecting all the Departments of the Tamil Nadu Government including Town Panchayats, Municipal Corporations and other Departments. If the said interpretation is accepted then the Government would incur loss to the tune of 100 crores in the Municipal Administration Department alone. However, in some department like the Rural Development and Panchayat Raj Department, it was decided not to recover. The discrepancy arose because of the wrong interpretation given to the One Man Commission, which was constituted under G.O.Ms.No.338. The respondents / contemnors are taking earnest effort to rectify the discrepancies and therefore, prayed that there is no willful disobedience by the respondents. Because of the said discrepancies and misquoting of G.O.Ms.No.177, the respondents could not prosecute in writ appeal and hence there is no willful disobedience.

5. On perusal of the order passed by the Writ Court and on the basis of other materials on the record, this Court is of the considered opinion that the writ Court has directed the respondents to carry out the correct fixation of pay as applicable to the writ petitioners, the same shall be effected and based on the corrected fixation the pension permissible is to be paid in accordance with the pay rules and Government Orders in force. Therefore, as per the Writ Court, the respondents are permitted to re-fix the pay and re-fix the consequential pension that is applicable to the petitioners.

6. As far as the wrong fixation from 01.08.2010 to 31.07.2015, the respondents / contemnors have already adjusted the amounts while paying the terminal benefits to the petitioners. Admittedly, the writ Court has stated that the recovery cannot be made for Class C and D employees and directed to take action against the erring officials. The learned Additional Advocate General submitted that the Town Panchayat Departments has taken a policy decision not to recover the amount. However, the Municipal Administration Department has not taken such a stand, because the loss would be more than 100 crores. Therefore, the respondents / contemnor is at liberty to move



review applications or other remedy as applicable. **After the disposal of the review applications, thereafter, the petitioners are at liberty to reopen this contempt.**

7. This Court is of the considered opinion that the Government has every power to fix the correct payment and recover the excess payment, if any condition is imposed while disbursing any monetary benefits. This issue was considered by the Honourable Supreme Court in the **Punjab and Haryana and others Vs. Jagdev Singh reported in (2016) 14 SCC 267**. In Jagdev case the Hon'ble Supreme Court has distinguished and clarified the judgment rendered in **State of Punjab and others Vs. Rafiq Masih (White Washer) reported (2015) 4 SCC 334**, In the **Jagdev Singh** case, the Hon'ble Supreme Court has held in Para 11

"The Officer to whom the payment was made in the first instance was clearly placed on notice that the payment found to have been made in excess would be required to be refunded".

In the present case, the learned Additional Advocate General has submitted that this condition was imposed to all the employees while disbursing the revision of payment or any payment disbursed to the employees. Therefore, this Court is of the considered opinion if such condition is imposed while disbursing the payment then the respondents / contemnors are having every right and power to recover the excess payment from the employees.

8. If the government had paid less amount, then the employee has every right to claim. Likewise, if the government has paid excess amount, then the government has every right to recover. The employees also have social responsibility and should realize that the salary is paid from the "public money". The employee has no right to claim excess money which would be illegal money in his hand.

9. With this observation and direction, the Contempt Petitions are closed.

Sd/-

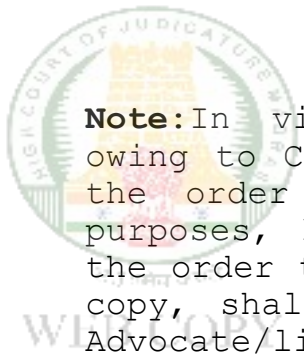
Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To
The Commissioner,
Karur Municipality,
Karur District.

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-8537[F] dated 24/02/2022)

Order made in
CONT.P(MD)No.1553, 1554 and 1555 of 2021
24.02.2022

CK(CO)
GC(11.03.2022) 6P 3C