



W.P.(MD).Nos.14389, 14391 and 14394 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)Nos.14389, 14391 and 14394 of 2020

and

W.M.P(MD) Nos.12031, 12032, 12034 of 2020,
5482, 5485 and 5484 of 2021

Kannan

... Petitioner
(in W.P(MD) No.14389 of 2020)

Pitchaimuthu

... Petitioner
(in W.P(MD) No.14391 of 2020)

Sivanathan

... Petitioner
(in W.P(MD) No.14394 of 2020)

Vs.

1. The Director of Local Fund Audit,
Integrated Complex for Finance Department,
Animal Husbandry Hospital Complex,
Chennai – 600 018.

2. The Commissioner,
Aranthangi Municipality,
Aranthangi,
Pudukkottai District.

... Respondents
(in all writ petitions)



**W.P.(MD).Nos.14389, 14391 and 14394 of
2020**

WEB COPY

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.2300/20/C1, dated 22.06.2020 passed by the second respondent, and quash the same and directing the respondents to restore the pay of the petitioners in the scale of pay of Rs.5200-20200-GP Rs.1900/- with effect from date of their initial appointment as unskilled workers on 12.05.2006 with all consequential service and monetary benefits.

In all writ petitions:

For Petitioners : Mr.K.Rajeshwaran

For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader
for R1

: Mr.P.Mahendran – for R2

COMMON ORDER

The present writ petitions have been filed by two Overhead Tank Assistants and Watchman of the second respondent Municipality challenging the order of reversion and recovery.

2. A perusal of the impugned order indicates that the petitioners were



W.P.(MD).Nos.14389, 14391 and 14394 of 2020

promoted from the post of unskilled worker to skilled worker and they were granted monetary benefits with effect from 01.08.2010. They were receiving higher salary from the said date onwards. Due to an audit objection, the present impugned order has been passed for reverting them from the post of skilled worker to unskilled worker. As per the impugned order, recovery has also been effected. Challenging the said order, the present writ petitions have been filed.

3. The learned counsel appearing for the writ petitioners contended that the Overhead Tank Assistants or Watchman are last grade servants and effecting an order of recovery would cause prejudice to them. He further contended that there was no misrepresentation on the part of the petitioners to receive higher salary. Therefore, the order of reversion as well as an order of recovery may be set aside.

4. Per contra, the learned counsel appearing for the second respondent Municipality had contended that erroneously, the unskilled workers were granted higher salary treating them as a skilled workers. Therefore, audit



**W.P.(MD).Nos.14389, 14391 and 14394 of
2020**

objection has been raised and pursuant to the said audit objection, they have been reverted to the post of unskilled workers and as a consequence, the order of recovery has been passed. Hence, he prayed for sustaining the entire impugned order.

5. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

6. A perusal of the impugned order clearly indicates that there is no fault on the part of the petitioners in being promoted or re-designated from unskilled workers to skilled workers. They have been receiving higher salary from 01.08.2010 onwards. It is also an admitted fact that there are Grade-IV servants in the second respondent Municipality. The judgment of the Hon'ble Supreme Court reported in **2015 4 SCC 334 (State of Punjab and others Vs.Rafiq Masih (White washer) and others)** has categorically held that no recovery from the persons belonging to the Class -IV Services could be made. That apart, the alleged excess payment has been made from the year 2010 onwards and the order of recovery has been passed in the year 2020.



**W.P.(MD).Nos.14389, 14391 and 14394 of
2020**

Therefore, for more than 5 years, before the order of recovery, the employees are receiving the said amount. As per orders of the Hon'ble Supreme Court, when an excess payment is being made for more than five years, the same cannot be recovered. However, if the petitioners have been erroneously promoted or redesignated from unskilled worker to skilled worker, the same could be rectified by the employer at any point of time. However, it can be done only after issuing notice to the writ petitioners.

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

- (i) The order impugned in these writ petitions are hereby set aside;
- (ii) The second respondent Municipality is at liberty to issue show cause notice with regard to the revision of pay scale alone and after hearing the explanation, they are at liberty to proceed further;
- (iii) Even in case, the revision of pay is effected after enquiry, no recovery order could be issued; and
- (iv) The pension papers of the writ petitioners shall be processed on the basis of the impugned order, (based upon the revised pay scale). In case, if the



**W.P.(MD).Nos.14389, 14391 and 14394 of
2020**

petitioners succeed, they will be entitled to receive the balance amount. The second respondent Municipality is directed to release the C.P.S amount. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

8. With the above said observations, these Writ Petitions stand allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

20.12.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

1. The Director of Local Fund Audit,
Integrated Complex for Finance Department,
Animal Husbandry Hospital Complex,
Chennai – 600 018.

2. The Commissioner,
Aranthangi Municipality,
Aranthangi,

6/8



**W.P.(MD).Nos.14389, 14391 and 14394 of
2020**

WEB COPY Pudukkottai District.

R.VIJAYAKUMAR,J.

ebsi

W.P(MD)Nos.14389, 14391 and 14394 of 2020



WEB COPY



**W.P.(MD).Nos.14389, 14391 and 14394 of
2020**

20.12.2023