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W.P.No.33709 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.33709 of 2015
and
M.P.Nos.1 and 22049
of 2015

C.Jagatheesan

... Petitioner

Vs.

1. The Director/Commissioner of Municipal Administration,
No.71, Urban Administrative Building,
Santhome High Road, MRC Nagar,
Raja Annamalaipuram, Chennai - 600 028.

2. The Commissioner
3rd Grade Municipality,
Edangannasalai, Sangagiri Taluk,
Salem District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the records relating to the proceedings of the second respondent dated 14.07.2015 issued in Na,Ka,No.426/2015/A1 and quash the same and consequently to restore pay salary as per the proceedings of the second respondent dated 30.01.2013 issued in Na.Ka.No.79/2012 by refunding the already recovered amount from the petitioner till the restoration of original pay.



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For petitioner : Mr.P.I.Thirumoorthy

For all respondents : Mr.Sanjai Gandhi

Additional Government pleader

ORDER

This writ petition is filed seeking for a certiorarified mandamus directing the respondents to quash the proceedings dated 14.07.2015 in dated 14.07.2015 issued in Na,Ka,No.426/2015/A1 and restore pay of the petitioner as per the proceedings of the second respondent dated 30.01.2013 issued in Na.Ka.No.79/2012 by refunding the already recovered amount.

2. The petitioner was working in the town Panchayat as a meter reader, which is one of the trade posts. He has required qualification including I.T.I. The post of Meter Reader is governed by Tamil Nadu Town Panchayat Establishment Rules, 1988 and the said rules were framed under the provisions of Tamil Nadu Panchayat Act, 1958. The petitioner being employed as a Meter Reader is entitled for a basic pay of Rs.4000-100-6000. The first respondent had issued proceedings dated 31.07.2000 in Na.Ka.No.13266/2000/A3 sanctioned a post of Meter



Reader in the second respondent Town Panchayat. The petitioner was appointed in the said post through employment exchange on consolidated pay, initially for a period of three years from 13.07.2001 in terms of the G.O.Ms.No.72 MAWSS, dated 05.05.1998. The petitioner joined duty on the said date and has completed three years of service on 12.07.2004, thereby he is entitled for regularization of service. Instead of regularizing the services from 13.07.2004, the services of the petitioner were regularized from 23.06.2006 *vide* proceedings dated 10.08.2006 in Na.Ka.No,171/2006/A1. The petitioner challenged the same in W.P.No.5893 of 2012 seeking for retrospective regularization and the same was allowed by this Court on 14.06.2012, directing to bring the petitioner in the time scale of pay with retrospective effect from 13.06.2004. Accordingly, the petitioner was brought under regular time scale w.e.f.13.07.2004 as per proceedings dated 30.01.2013 and his pay scale was fixed as Rs.4000-100-6000.

3. It is submitted by the learned counsel for the petitioner that the respondent without issuing any notice or memo has revised and reduced the petitioner's pay and consequently ordered for recovery. The respondent has not conducted any enquiry, no material was supplied to the



petitioner prior to cancellation of the pay which was fixed by the second respondent in his proceedings dated 14.07.2012 issued in Na.Ka.No.426/2015/A1 earlier. The petitioner was ordered to pay a sum of Rs.5,80,652/- by canceling the earlier pay fixed on 30.01.2013. Therefore, the petitioner's pay was reduced to a tune of Rs.5,806/- per month. Aggrieved by the same, the present writ petition is filed.

4. The learned Additional Government Pleader submitted that the pay of the petitioner was fixed incorrectly and thereby, excess amount was paid to the petitioner. Therefore, the respondents have issued impugned proceedings canceling the earlier pay fixation and ordered for recovery of the same.

5. The petitioner has filed a copy of the orders passed by this Court in similarly placed circumstances in W.P.No.12891 of 2015 and also reported the law laid down by the Hon'ble Supreme Court in **2015 (5) CTC 455, State of Punjab and others vs. Rafiq Masih**. The relevant portion of the order runs as under:



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4. *The Hon'ble Supreme Court in the case of **White Washer (supra)**, has categorically held that recovery from employees, particularly when the mistake of excess payment was on the part of the employer, is impermissible in law. The relevant portion of the order reads 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, summaries 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.



(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."

The petitioner has challenged this writ petition on the ground that principles of natural justice have not been followed prior to issuance of the impugned order. Admittedly, the impugned orders have been passed by the respondents without giving any notice, without asking for any reply or clarification and also without conducting any enquiry as to whether excess amount was paid to the petitioner while fixing the salary. The respondents should have given notice and after hearing the petitioner the respondent's should have passed the impugned order for recovery of excess salary if any.

6. The learned Additional Government Pleader at this stage submitted that the respondents be permitted to make enquiry by issuing proper notice to the petitioner. The request of the learned Additional Government Pleader is recorded.



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7. Accordingly this writ petition is disposed of setting aside the impugned orders dated 14.07.2015 issued in Na,Ka,No.426/2015/A1 and the respondents are at liberty to initiate the steps for fixation of pay of the petitioner afresh by following the due procedure of law. Connected M.Ps are closed. No costs.

29.01.2024

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Index : Yes/No
Internet : Yes/No
Citation : Yes/No

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