



WEB COPY



W.P.No.33710 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM :

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

W.P.No.33710 of 2015

and

M.P.No.1 of 2015

R.Vivekanandan

... Petitioner

Vs.

1. The Director of Town Panchayat,
Kuralagam Buildings, Chennai – 108.

2. The Executive Officer,
Sanagiri Selection Grade Town Panchayat,
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 23.09.2015 issued in Na.Ka.No.570/2015 and quash the same and consequently to restore pay salary as per the proceedings of the second respondent dated 31.07.2013 issued in Na.Ka.No.1/2013 by refunding the already recovered amount from the petitioner till the restoration of original pay.

For petitioner	: MrP.I.Thirumoorthy
For respondents	: Mr.Sanjai Gandhi
	Additional Government pleader



ORDER

WEB COPY

This writ petition is filed seeking for a certiorarified mandamus directing the respondents to quash the proceedings of the second respondent dated 23.09.2015 issued in Na,Ka,No.570/2015 and quash the same and consequently to restore pay salary as per the proceedings of the second respondent dated 31.07.2013 issued in Na.Ka.No.1/2013 by refunding the already recovered amount from the petitioner till the restoration of original pay.

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 was 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, had sanctioned a post of Electrician in the second respondent Town Panchayat. The petitioner was appointed in the said post through employment exchange on consolidated pay, initially for a



W.P.No.33710 of 2015

period of three years from 01.11.2001 in terms of the G.O.Ms.No.72 MAWSS , dated 05.05.1998. The petitioner joined duty on the said date has completed three years of service on 31.10.2004, thereby he is entitled for regularization of service. Instead of bringing the services regularized from 11.11.2004 the services have been regularized from 23.06.2006 *vide* proceedings dated 28.07.2008. The petitioner challenged the same in W.P.No.10678 of 2012 seeking for retrospective regularization and the same was allowed by this Court with a direction to bring the petitioner in the time scale of pay with retrospective effect from 01.11.2004. Accordingly, the petitioner was brought under regular time scale w.e.f. 31.07.2003 as per proceedings dated 31.07.2013 issued in Na.Ka.No.1 of 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, without conducting any enquiry revised and reduced the pay. No materials were supplied to the petitioner before cancellation of the pay which was fixed earlier. The petitioner was ordered to pay a sum of Rs.4,75,827/- by canceling the earlier pay fixed on 31.07.2013. Accordingly, the petitioner's pay was reduced to a tune of Rs.4,758/- per month. Aggrieved by the same, the



present writ petition is filed.

WEB COPY

4. The learned Additional Government Pleader submitted that the pay of the petitioner was fixed incorrectly and thereby, excess amount was required to be recovered from the petitioner, therefore, the respondents have issued impugned proceedings canceling the earlier pay fixation and revised the pay 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 dated 01.02.2022 in W.P.No.12891 of 2015 and also referred the law laid down by the Hon'ble Supreme Court of India in ***State of Punjab and others vs. Rafiq Masih, 2015 (5) CTC 455***, the relevant portion of which runs as under:

"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 and 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 respondent should have given notice and after hearing them the respondent's should have passed the impugned orders for recovery of excess amount.

6. The learned Additional Government Pleader at this stage submitted that the respondents be permitted to make fresh enquiry by



W.P.No.33710 of 2015

issuing proper notice to the petitioner. The request of the learned Additional Government Pleader is recorded. Accordingly this writ petition is disposed of setting aside the impugned orders dated 23.09.2015 in Na.Ka.No.570/2015 and the respondents are at liberty to initiate the steps for fixation of pay of the petitioner afresh by issuing notice to the petitioner and by following the due procedure. Connected M.P. is closed. No costs.

29.01.2024

vca

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

To:

1. The Director of Town Panchayat,
Kuralagam Buildings, Chennai - 108.
2. The Executive Officer,
Sanagiri Selection Grade Town Panchayat,
Salem District.



WEB COPY



W.P.No.33710 of 2015

DR. D.NAGARJUN,J.

vca



WEB COPY



W.P.No.33710 of 2015

W.P.No.33710 of 2015
and
M.P.No.1 of 2015

29.01.2024