

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.31427/2015 & MP.Nos.1&2/2015

Mr.J.Nanchundappa

..Petitioner

Versus

- 1.The Director of Sericulture,
Sericulture Department,
Anaimeedu, Salem.
- 2.The Assistant Director
Sericulture Department
Kolatti, Denkanikottai Taluk
Krishnagiri District 635 107.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorari calling for the records in pursuant to the proceedings Na.Ka.No.146/A/2011 dated 25.07.2013 of the 2nd respondent and quash the same.

For Petitioner : Ms.Lesi Saravanan

For R1 & R2 : Mr.R.Vijayakumar, AGP

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner joined as Sericulture worker in the year 1982 on daily wage basis and his services were regularised with effect from 23.02.2010 and in terms of G.O. [2D] No.64, Labour and Employment [J1] Department dated 18.10.2004, the minimum rate of wages with Dearness Allowance were revised and the petitioner and other similarly placed persons have been paid daily wages at the rate of Rs.82.50p. + Dearness Allowance and the said Government Order further stipulates that the Dearness Allowance shall be calculated every year on 1st of April based on the Consumer Price Index of each year and accordingly, the Dearness Allowance was calculated for the years 2006 to 2008 and 2009 to 2010. The Government subsequently passed G.O. [2D] No.37, Labour and Employment Department dated 23.07.2010, refixing the minimum rates of wages in employment in Sericulture and once again, the wages of the petitioner and other similarly placed persons has been revised as Rs.95/- per day apart from the Dearness Allowance. It is also stated by the petitioner that the Sericulture workers do not enjoy any pensionary benefits and they are eligible to receive Employees Provident Fund only. To the shock and surprise of the petitioner,

the 2nd respondent has passed the impugned order alleging that excess payment of Dearness Allowance has been made and ordered for recovery of the same in instalments and challenging the legality of the said order of recovery, the petitioner came forward to file this writ petition.

3 Learned counsel for the petitioner has drawn the attention of this Court to the impugned order of recovery passed by the 2nd respondent and would submit that admittedly, before passing the said order, the petitioner has not been afforded with any opportunity whatsoever and without calling for his explanation, the recovery has been ordered in instalments and in that event, the petitioner as well as his family are bound to suffer grave hardship and mental agony and prays for appropriate orders.

4 This Court heard the submission of Mr.R.Vijayakumar, learned Additional Government Pleader, who accepts notice on behalf of the respondents.

5 A perusal of the impugned order would disclose that before the order of recovery in instalments, the petitioner has not been afforded with any opportunity in the form of Show cause notice and no explanation has been obtained from the petitioner also. The impugned order of recovery visited the petitioner with grave civil consequences and therefore, in all fairness, before passing the impugned order, the 2nd respondent should have given an opportunity to enable the petitioner to put forth his explanation/stand and the said officer has failed to do so and hence, on the short ground, the impugned order warrants interference.

6 In the result, the writ petition is partly allowed and the impugned order passed by the 2nd respondent vide proceedings in Na.Ka.No.146/A/2011 dated 25.07.2013 is set aside the matter is remanded to the 2nd respondent, who shall issue show cause notice, giving out the reasons for effecting the order of recovery within a period of two weeks from the date of receipt of a copy of this order and the petitioner, who on receipt of the same, is directed to submit his explanation to the 2nd respondent within a further period of three weeks thereafter and the 2nd respondent, on receipt of such explanation/representation, shall consider the same on merits and in accordance with law and pass orders within a further period of six weeks thereafter and communicate the decision taken, to the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Director of Sericulture,
Sericulture Department,
Anaimeadu, Salem.

2.The Assistant Director
Sericulture Department
Kolatti, Denkanikottai Taluk
Krishnagiri District 635 107.

+1cc to Mr.Lesi Saravanan, Advocate, S.R.No.54998
+1cc to the Government Pleader, S.R.No.54403

CA(CO)
EU(14/10/2015)

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