



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.9461 of 2014

and

M.P(MD)No.1 of 2014

P.Arul Selvam

... Petitioner

vs.

1)The State of Tamil Nadu, Represented by its
Principal Secretary to Government,
Rural Development & Panchayat Raj Department,
Chennai-09.

2)The District Collector,
Collectorate,
Sivaganga District,
Sivaganga.

3)The Block Development Officer,
Kallal Panchayat Union,
Kallal, Karaikudi Taluk,
Sivaganga District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 3rd respondent in proceedings Na.Ka.A1/1738/2005 dated 28.04.2014 and quash the same and consequently direct the respondents to grant all increments and other service benefits to the petitioner within a stipulated time may be fixed by this Hon'ble Court.

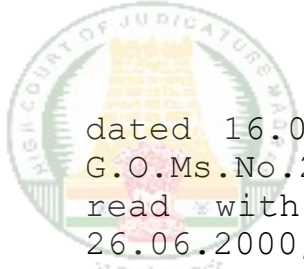
For Petitioner : Mr.M.Saravana Kumar

For R1 & R2 : Mr.M.MURUGAN, Government Advocate

For R3 : No appearance

ORDER

Learned counsel for the petitioner would submit that Mr.P.Arul Selvam who was appointed as Masalgi on 11.11.1980 and subsequently posted as Night Watchman by the proceedings of the 3rd respondent/Block Development Officer, Kallal Panchayat Union,



dated 16.06.1981, got the benefit of regularisation pursuant to G.O.Ms.No.267, Rural Development Department, dated 22.12.1999, read with G.O.Ms.No.161, Rural Development Department, dated 26.06.2000, accordingly, his pay was fixed in the scale of pay of Rs.750-12-1870-15-945. While so, the 3rd respondent has issued a recovery proceedings dated 19.06.2002 directing the authorities below him to recover a sum of Rs.1,28,254/- from the petitioner's salary and the said order also specifically mentioned that recovery should be made at the rate of Rs.1,000/- in 128 installments and the balance of Rs.254/- in 129th installment. When the petitioner has challenged the said recovery order in W.P.No.23780 of 2002, on the ground that the same was issued without any notice or holding any enquiry whatsoever, as a result, he was not able to represent his case, this Court has passed a final order on 06.02.2012 in W.P.No.23780 of 2002. The relevant portion of the said order is given as under:-

''8.Both the petitioners were appointed by an order of the competent authority and their services have been regularised. Therefore, before proceeding to recover salary, it is incumbent on the respondent authorities to put the petitioners on notice and give them an opportunity to put forth their case. This has not been done in the present case. There is a gross violation of principles of natural justice. At the time of admission, interim order was granted on 7.4.2002 which was subsequently made absolute on 16.9.2003.

9.In view of the reasons stated above, the impugned orders of recovery in both writ petitions are set aside giving liberty to the respondents to proceed in the matter after issuance of proper notice, if they so desire.

10.The writ petitions are allowed as above. No costs.''

2.Adding further, he would submit that when there was a clear direction issued by this Court, with liberty to the respondents to proceed with the matter after issuance of proper notice, if they so desire, again, the 3rd respondent without giving any notice or providing any reasonable opportunity, passed yet another order of recovery dated 04.07.2013. Finding that he was not given any reasonable opportunity as directed by this Court in W.P.No.23780 of 2002, dated 06.02.2012, the petitioner has again visited this Court with another W.P(MD)No.12646 of 2013 and this Court after considering the contention of the petitioner that earlier direction given in W.P.No.23780 of 2002, dated 06.02.2012, giving liberty to the respondents to proceed further after giving a proper notice, was not complied with, allowed the second writ petition also by order dated 30.07.2013, setting aside the second recovery order, however, considering the fact that liberty should be given to the respondents to proceed with the matter, this Court had granted yet another liberty making it clear that the petitioner should be put on notice with reasonable opportunity.



Again, overlooking the second direction issued to the respondents, to issue a notice to petitioner, if necessary to proceed against him for recovery, the 3rd respondent has passed the present impugned order, again committing the repeated mistake. He also submitted that during the pendency of this writ petition, the petitioner has also reached the age of superannuation on 31.05.2015.

3.Placing reliance on a judgment of the Hon'ble Apex Court in the case of **State of Punjab vs. Rafiq Masih**, reported in **(2015) 4 SCC 334**, learned counsel for the petitioner would submit that recovery from the employees belonging to Class III and Class IV (Groups C & D) would be impermissible in law. Since the petitioner also belongs to Class III and Class IV (Groups C & D), inasmuch as he was appointed in the beginning as Masalgi and thereafter posted as Watchman, in the light of the recent judgment mentioned above, he pleaded, the impugned order is liable to be set aside, without giving any liberty whatsoever.

4.No representation for the 3rd respondent. Mr.M.Murugan, learned Government Advocate appearing for the respondents 1 and 2, would submit that as per the order passed by this Court in W.P(MD) No.12646 of 2013, dated 30.07.2013, giving liberty to the respondents to initiate recovery proceedings against the petitioner herein, the 3rd respondent has issued an intimation about the recovery, by notices dated 18.10.2013, 21.10.2013 and 04.12.2013 respectively, giving reasonable opportunity to the petitioner, however, the petitioner submitted his representation to the abovesaid notices only on 21.04.2014. He further submitted that after considering the case of the petitioner in the light of G.O.Ms.No.161, Rural Development Department, dated 26.06.2000, the 3rd respondent has passed the impugned order of recovery dated 28.04.2014, to recover the amount at the rate of Rs.1,000/- per month from his salary, from April 2014 till the month of his superannuation, therefore, he pleaded, the same cannot be found fault with.

5.But, this Court is not able to agree with the submissions made by the learned Government Advocate appearing for the respondents 1 and 2. The reason is, the impugned recovery proceedings dated 28.04.2014, cannot be construed as a notice given to the petitioner, to show cause as to why an order of recovery should not be passed against him. Secondly, there is no reference in the impugned order dated 28.04.2014 that before passing the impugned order, notice was issued to the petitioner calling upon him to submit his explanation.

6.In any event, the law is well settled by the latest judgment of the Apex Court in **State of Punjab vs. Rafiq Masih**, reported in **(2015) 4 SCC 334**, making it clear that recovery from the employees

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belonging to Class III and Class IV (Groups C & D), would be impermissible in law. In this context, it is relevant to extract paragraph 18 of the said judgment, which is given as under:-

'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 hereinabove, we may, as a ready reference summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) **Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).**

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.'

7. In the light of the above judgment, if the case of the petitioner is considered, as I mentioned above, since he belongs to Class IV (Group D service), as he was appointed as Masalgi on 11.11.1980 and subsequently posted as a Night Watchman, the respondents cannot proceed against the petitioner with the impugned order of recovery, therefore, the impugned order is set aside. The order dated 29.05.2015 issued by the Commissioner, Kallal Panchayat Union, shows that the petitioner who was working as a Night Watchman, was permitted to retire from service with effect from 31.05.2015, hence, the respondents are directed to settle the pensionary benefits of the petitioner by forwarding pension proposal to the competent authority, within a period of six weeks from the date of receipt of a copy of this order.

In the result, this writ petition is allowed. No costs. M.P (MD) No.1 of 2014 is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar



nbi

To

1) The Principal Secretary to Government,
The State of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Chennai-09.

2) The District Collector, Collectorate,
Sivaganga District, Sivaganga.

3) The Block Development Officer,
Kallal Panchayat Union,
Kallal, Karaikudi Taluk,
Sivaganga District.

+1CC to Mr.M.Saravana Kumar, Advocate Sr.No.40224

+1CC to Spl.Government Pleader Sr.No.40185

GJM/CK/24.8.16-5p-6c

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