IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.01.2017

Coram

The Honourable Mr. JUSTICE M.SATHYANARAYANAN

Writ Petition No.25275 of 2015
and
M.P.Nos 1 and 2 of 2015

N.Basavanna ... Petitioner

-Vs-

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

2. The Assistant Director,
Sericulture Department,
Madhahalli,
Erode District. ...Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 2nd respondent in Na.Ka.No.827/A/2011 dated 31.05.2012 and quash the same.

For Petitioner : Mrs.Dakshiyini Reddy
for M/s.Mukund R.Pandiyan

For Respondents : Mr.K.Dhananjayan,Spl.G.P.

O R D E R

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

2. The petitioner is a daily wage employee and admittedly his service came to be regularised. The grievance expressed by the petitioner is that all of a sudden, the Assistant Director of Sericulture, Madhahalli, has issued an impugned memo dated 31.05.2012 ordering recovery of excess amount paid as dearness allowance. Challenging the legality of the same, the petitioner has come forward to file this writ petition.

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3. Learned counsel for the petitioner made the following submissions.

The impugned memo issued to the petitioner by the Assistant Director of Sericulture, Madhahalli, do not refer to any communication issued to the petitioner calling upon him to offer his explanation as to the recovery of the excess payment of dearness allowance and in the absence of the show cause and getting response from the petitioner, the impugned memo is in violation of principles of natural justice and in the light of the judgment rendered by the Honourable Supreme Court reported in 2015(4) SCC 334 (State of Punjab and others vs. Rafiq Masih), the amount excess paid to Class III and Class IV employees or Group-C and Group-D employees, cannot be recovered and therefore, prays for quashment of the impugned memo.

4. Per contra, Mr.K.Dhananjayan, learned Special Government Pleader has drawn the attention of this Court to the counter affidavit filed by the Assistant Director of Sericulture and would submit that the service of the petitioner was regularised and he was brought into time scale of pay and due to inadvertence and also on account of wrong calculation, excess amount was paid to him by way of dearness allowance and the details of recovery is also furnished to the petitioner and the petitioner has also expressed no objection for recovery for the same and after providing fair and reasonable opportunity only, the impugned memo came to be passed and therefore, prays for dismissal of the writ petition.

5. This Court paid its best attention to the rival contentions and also perused the materials available on record.

6. A perusal of the impugned memo passed by the 2nd respondent clearly reveal that before effecting the order of recovery of excess paid dearness allowance, the petitioner having not been put on notice and therefore, this Court is of the considered view that the impugned order/memo sought to recover the excess paid dearness allowance is per se in violation of principles of natural justice and normally, this Court would have set aside the memo and remand the matter back for fresh consideration and pass orders after providing opportunity to the petitioner to putforth his explanation. However, the Honourable Supreme Court of India, in the judgement reported in 2015(4) SCC 334 (State of Punjab and others vs. Rafiq Masih), has considered the issue as to the right of the employer to recover the amount paid in excess without any fault on the part of the employee. The Honourable Supreme Court of India, after taking into consideration, the earlier decision, especially, the decision reported in 2012 (8)

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SCC 417 (Chandi Prasad Uniyal vs. State of Uttarakhand) has held as follows:

> 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 wrongly been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightlyfully 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. Admittedly, the petitioner belongs to Grade -D, Class IV category, and he was a daily wage employee and later on, his service was regularised. Though it is the vehement submission of the learned Special Government Pleader that due to inadvertence and wrong calculation, the petitioner was paid with excess dearness allowance, the fact remains that he has not made any mis-representation and got that amount.

8. In the light of the above cited judgments rendered by the Honourable Supreme Court of India, though the petitioner was paid with excess dearness allowance, it cannot be recovered as he belongs to Group-D, Class IV category. Therefore, the writ petition is allowed. The impugned memo passed by the 2nd respondent is set aside. However, it is made clear that the

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amount so far recovered from the petitioner need not be refunded. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi

To

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

2. The Assistant Director,
   Sericulture Department,
   Madhahalli,
   Erode District.

+1cc to the Government Pleader sr.2035

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