

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.11.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.7643 of 2015

and

M.P.No.2 of 2015

J.Ellappa

...Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Handloom, Handicrafts, Textiles & Khadi Department
Fort St.George, Chennai - 600 009.

2. The Director,
Department of Sericulture,
Annaimedu, Salem - 636 001.

3. The Assistant Director,
Department of Sericulture,
Government Sericulture Training School,
Hosur, Krishnagiri (D.T)-635 109.

4. The Principal Deputy Director
Government Silk Worm Training School,
Hosur,
Krishnagiri (D.T) - 635 109.

...Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in his proceedings No:Na.Ka.No:762/A/2011-2 dated 28.03.2012 and quash the same and consequently direct the respondents to pay the entire provident fund immediately to the petitioner with accrued interest.

For Petitioner : Mrs.Selvi Rajesh

For Respondents : Mrs.K.Bhuvaneswari
Government Advocate

O R D E R

The order of recovery issued by the 4th respondent in

proceedings dated 28.03.2012 is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the writ petitioner made a submission that the petitioner was employed as guard and subsequently his services were regularized by the 4th respondent in proceedings dated 28.04.2010. The petitioner continued as regularized employee and retired from service on 30.06.2014, on attaining age of superannuation.

3. However, when he was in service, the 4th respondent issued the impugned order of recovery stating that excess payment was paid to the writ petitioner from 2004 to 2011. The writ petitioner made a submission that no show cause notice was issued and no opportunity was given to the writ petitioner before passing the impugned order and therefore, the order of recovery is in violation of principles of natural justice.

4. This Court is of the view that the writ petitioner is last grade servant working in the Department and there is no allegation of mis-representation or otherwise on the part of the writ petitioner. In respect of the excess payment of salary, after retirement, the excess amount cannot be recovered from the writ petitioner.

5. The petitioner is now 63 years old and Hon'ble Supreme Court in the matter of recovery has settled the legal principles in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334 and relevant portion of the same 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, 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".

6. In paragraph 18 of the sub clause-(ii) of the judgment stated supra, the Hon'ble Supreme Court clarified that recovery from the retired employees or the employees who are due to retire within one year, cannot be made. In the case on hand, the writ petitioner was allowed to retire from service in the year 2014 and now he is aged about 63 years. Thus, the recovery made without even providing opportunity to the writ petitioner, cannot be sustained.

7. Accordingly, the impugned order in this writ petitioner passed by the fourth respondent in proceedings Na.Ka.No.762/A/2011-2, dated 28.03.2012 is quashed and the writ petition stands allowed. No costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

kv/nvi
To

1. The State of Tamil Nadu,
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- +1cc to Mr.P.Rajesh, Advocate, S.R.No.81644
+1cc to the Government Pleader, S.R.No.82025

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CS (CO)
RRK(12/01/2018)