

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.44257 of 2016

and WMP.No.38102 of 2016

S.Joseph Mariadass

.. Petitioner

vs.

1.The District Collector,
Namakkal District,
Namakkal.

2.Block Development Officer,
Tirchengode,
Namakkal District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent herein in relation to his proceedings Na.Ka.No.2485/2015/A1 dated 02.12.2016 and to quash the same and consequently direct the respondents herein to desist from recovering any money from the petitioner herein.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.K.Dhananjayan,
Special Govt. Pleader for R1

Mr.K.Balamuruga,
Government Advocate for R2

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O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner has retired from service as Skilled Assistant Grade II (Special Grade) on 30.06.2014 and claims to have put in more than 34 years of hard, sincere and unblemished

service. The petitioner would state that in terms of the recommendations of One Man Commission, orders were issued in G.O.Ms.Nos.254 to 338, Finance (Pay Cell) Department dated 26.08.2010 revising the scales of pay of various posts in Ordinary Grade Scales of Pay Department wise, notionally with effect from 01.01.2006 and with monetary benefit from 01.08.2010 and subsequently, the Government, vide Letter No.63305/Pay Cell/2010-1 dated 08.11.2010, issued guidelines for fixation of pay in the revised Selection Grade/Special Grade post and also specified the Revised Selection Grade and Special Grade Scales of Pay, corresponding to the Ordinary Grade Scales of Pay in Annexure I to the said Government Letter and in pursuant to the same, the Special Grade Scale of Pay in respect of the petitioner was revised to Rs.9,300 - 34,800 with Grade Pay Rs.4,400/- and monetary benefits with effect from 01.08.2010. The petitioner would further state that he had been drawing Revised Special Grade Scale of Pay until the date of his retirement on 30.06.2014. However, to his shock and surprise, he was issued with the impugned order, ordering recovery of Rs.1,29,031/- on the ground that as per G.O.Ms.No.325, Finance (Pay Cell) Department dated 22.07.2013, it should be payable with effect from 01.04.2013. The petitioner, challenging the legality of the same, came forward with this writ petition.

3. Mr.M.Ravi, learned counsel appearing for the petitioner would submit that admittedly, the petitioner has not been put on notice before ordering recovery and would contend that in the light of the judgment rendered by the Hon'ble Supreme Court of India in State of Punjab and Others v. Rafiq Masih (White Washer) and Others [(2015) 4 SCC 334], excess amount paid to Class III & IV (Groups C & D) employees cannot be recovered and prays for appropriate orders.

4. Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents 1 and 2 would submit that the second respondent, taking into consideration the relevant Government Orders, has rightly passed the impugned order and prays for dismissal of the writ petition.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. A perusal of the impugned order would indicate that before passing the order of recovery, the petitioner has not been put on notice. It is a well settled position of law that the order of recovery visits the petitioner with grave civil consequences and in all fairness the petitioner ought to have been put on notice before ordering recovery and hence, on the sole ground, the impugned order warrants interference.

7. In the result, this Writ Petition is partly allowed and the impugned order of the second respondent in proceedings in Na.Ka.No.2485/2015/A1 dated 02.12.2016 is set aside and the second respondent is directed to issue show cause to the petitioner spelling out the reasons as to the recovery to be effected to the petitioner within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, it is open to the petitioner to submit his representation/explanation within a period of three weeks thereafter and upon receipt of the same, the second respondent is directed to consider and pass orders on merits and in accordance with law within a period of six weeks thereafter and communicate the decision taken, to the petitioner.

8. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

jvm

To

- 1.The District Collector,
Namakkal District,
Namakkal.
- 2.Block Development Officer,
Tirchengode,
Namakkal District.

+1cc to Mr.Ravi Advocate, SR.No.2282.
+1cc to the Government Pleader SR.No.2220.

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SSK(CO)
GN(30/01/2017)