



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2017

CORAM

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THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

W.P(MD).No. 6751 of 2014
in
M.P(MD).Nos.1 and 2 of 2014

Karuppiiah

... Petitioner

Vs.

1. The Commissioner,
Horticulture and Plantation Crops Dpartment,
Cheppauk,
Chennai - 600005.

2. The Deputy Director of Horticulture,
Sivagangai,
Sivagangai District.

3. The Joint Director of Agriculture,
Thanjavur,
Thanjavur District.

... Respondents

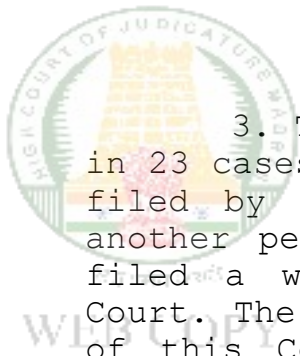
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned recovery order passed by the 1st respondent, vide Letter No. Ka.Pa.Ni.2/18583/2013, dated 04.01.2014 and quash the same with respect to the petitioner and consequently direct the respondents to continue all the increments as per the original pay fixation.

For petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.N.S.Karthikeyan
Additional Government Pleader

ORDER

This writ petition is filed challenging proceedings of the second respondent, dated 04.01.2014, by which a direction was issued to recover certain amount from the petitioner. The impugned order was passed without even issuing show cause notice. The impugned order also indicates that the recovery is on account of payments earlier made to the petitioner mistakenly by way of increments.



3. Though the impugned order was passed by directing recovery in 23 cases, which are similarly placed, this writ petition has been filed by the petitioner, who is one among the 23 persons. Yet another person against whom also the order of recovery was passed filed a writ petition in W.P.(MD).No.12271 of 2014 before this Court. The said writ petition was allowed by a learned Single Judge of this Court, on 05.03.2015, after placing reliance on several judgments of the Hon'ble Supreme Court and this Court. Para Nos.11 to 15 of the said order is relevant and it has been held as follows:

" 11. In a recent decision of the Honourable Supreme Court which is relied upon by the learned Counsel appearing for the petitioner, it has been observed in paragraphs 2, 3 and 12 reads as follows:

"2. All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay-scales; or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake employees were in receipt of monetary benefits, beyond their due.

3. Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees is totally ruled out. It would therefore not be incorrect to record, that the private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments.

12. 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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

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

(iii) Recovery from 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.

12. Applying the above decision of the Honourable Supreme Court to the present case, it is seen that the petitioner is not guilty of furnishing of incorrect information to get the benefits and as on the other hand it is only due to the mistake of Department such excess payment was made. Hence, I am of the view that the petitioner cannot be made to suffer by imposing the order of recovery as his case is squarely covered by the decision of the Honourable Supreme Court, more particularly, under Clauses 2 and 4 of paragraph 12 as extracted supra.

13. In this case, the recovery order has been made within one year of the date of the retirement of the petitioner. It is also seen that Clause 4 in paragraph 12 of the above said decision of the Honourable Supreme Court protects the petitioner's interest.

14. Accordingly, I find that the petitioner is entitled to succeed in the writ petition.

15. In the result, the Writ Petition is **allowed** and the impugned orders are set aside. The respondents are directed to refund the amount from the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected

Miscellaneous petitions are closed."

4. Since the facts are identical in the present case, the petitioner is also entitled to the same relief. Hence, this writ petition is allowed and the impugned order of the first respondent, in Letter No.Ka.Pa.Ni.2/18583/2013, dated 04.01.2014, is set aside. In case, the respondents have recovered any amount from the petitioner, they shall refund the amount recovered from the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner,
Horticulture and Plantation Crops Dpartment,
Cheppauk,
Chennai - 600005.

2.The Deputy Director of Horticulture,
Sivagangai,
Sivagangai District.

3.The Joint Director of Agriculture,
Thanjavur,
Thanjavur District.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.62532

+1cc to Mr.K.P.NARAYANAKUMAR Advocate in SR. No.62215

PJL

JS/MR/SAR.1/3.7.2017/4P-6C

**W.P (MD) .No.6751 of 2014
28.06.2017**