

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.9.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH  
AND  
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

Writ Appeal No.1882 of 2018

1. The State of Tamil Nadu  
Rep. by the Secretary  
Rural Development and Panchayat Raj Department  
Fort St. George  
Chennai 600 009.
  2. The District Collector  
Neelagiri District at  
Udhagamandalam.
  3. The Commissioner  
Gudalur. ... Appellants
- Vs.
- A.Abdul Ameer ... Respondent

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Appeal under Clause 15 of Letters Patent directed  
against the order dated 23.3.2017 made in W.P.No.300 of  
2015 dated 23.3.2017 on the file of this Court.

WP.300/2015:

Prayer:Writ Petition under Article 226 of the Constitution  
of India praying for the issue of a Writ of Certiorified  
Mandamus Calling for records relating to the third  
respondents letter Na.Ka.A1 No.2123/2008 dt.23.04.2008 and  
that of the consequential clarification made in Na.Ka.No.  
2424/2012 dated 11.02.2013, to quash the same and  
consequently direct the respondents to extend all benefits  
of pay scales and other accrued benefits thereto on the  
basis of regularization of the services of the petitioner  
with effect from 10.01.1995 and to repay the instalments  
already recovered.

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For Appellants : Mr.Arvind Pandian  
Addl. Advocate General  
Assisted by  
Mr.V.Jayaprakash Narayanan, Spl.G.P.  
For Respondent : Mr.S.P.Sudalaiyandi  
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J U D G M E N T  
(Made by Huluvadi G.Ramesh, J)

This writ appeal has been directed against the order dated 23.3.2017 made in W.P.No.300 of 2015 dated 23.3.2017.

2. Heard Mr.Arvind Pandian, learned Additional Advocate General appearing for the appellants and Mr.S.P.Sudalaiyandi, learned counsel appearing for the respondent.

3. The services of the respondent herein, who was appointed as Night Watchman on 11.01.1985, was regularized on completion of ten years. In view of G.O.Ms.No.161, Rural Development (E7) Department dated 26.6.2000, wherein it was sought to bring all the persons similar to the respondent herein in the time scale of pay in the sanctioned post from the date of the said Government Order, the pay of the respondent was revisited and refixed and recovery was ordered by order dated 23.4.2008. Thereafter, by proceedings dated 11.02.2013 addressed to the third respondent, the second respondent had clarified that out of 131 instalments of recovery, only 57 instalments have been recovered and 73 instalments are yet to be recovered. Assailing the above orders and contending that the monetary benefits have to be given only from the date of regularization and not from the date of the issue of G.O.Ms.No.161 dated 26.6.2000 and that when G.O.Ms.No.161 dated 26.6.2000 has been quashed by this Court, the order re-fixing the pay has to be set aside, the respondent filed the writ petition.

4. Admittedly, in W.P.No.49613 of 2006 (M.Sakkarai v. The Government of Tamil Nadu, rep. by the Secretary, Rural Development Department), this Court quashed G.O.Ms.No.161 dated 26.6.2000 and also the consequential order of recovery. Taking note of the above, the learned single Judge allowed the writ petition, setting aside the orders of re-fixation of pay and recovery and also the directed to refund the amount recovered, if any, from the respondent within four weeks from the date of receipt of a copy of that order.

5. Assailing the above order of the learned single Judge, the State has come up with the above appeal.

6. The learned Additional Advocate General contended that the facts in issue before this Court is squarely covered by the decision of a Division Bench of this Court in C.Mariappan v. Tamil Nadu Charitable and Endowments and News Department [2016 SCC OnLine Mad. 27100], wherein it is held as under:

"In the result, the writ appeals are partly allowed and in so far as the impugned order directing the respondents not to recover the excess amount already paid, is sustained and it is remanded to the third respondent for the purpose of adjudicating the issue as to whether the refixation of scale of pay can be done or not? The impugned orders dated 13.02.2012 passed by the third respondent shall be treated as show cause notice and the appellants/writ petitioners are directed to submit their representations within a period of three weeks from the date of receipt of a copy of this order and on such receipt of representations, the third respondent is directed to consider the same on merits and in accordance with law and after providing with the appellants/writ petitioners, opportunity of personal hearing, pass orders within a further period of eight weeks thereafter and intimate the decision taken, to the appellants/writ petitioners."

7. As regards recovery of the amount paid in excess to Group C and D employees, the Apex Court in State of Punjab v. Rafiq Masih (White Washer) [2014(4) SCC 334] held as under:

"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 [6] 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."

8. It is, thus well settled that where the employer has made payments mistakenly to the employees belonging to Class III and Class IV service or Group 'C' or Group 'D' service, such payments cannot be recovered from the employees as the same is impermissible in law.

9. That apart, in view of the decision of a Division Bench of this Court in C.Mariappan v. Tamil Nadu Charitable and Endowments and News Department [2016 SCC OnLine Mad. 27100], we are of the considered opinion that the respondent should be given liberty to make representation to the appellants with regard to the date from which his services are to be regularised. Accordingly, it is open to the respondent to make a representation to the appellants with regard to the date from which his services are to be regularised and on such representation being made, the appellants shall consider the case of the respondent as to the date from which regularization can be made, namely from the date of the issue of G.O. or from the date of completion of ten years of service as full time wages or daily wages or on temporary basis, and pass orders, after affording opportunity of personal hearing to the respondent, on merits and in accordance with law, within a period of three months from the date of representation.

The writ appeal is disposed of accordingly. There shall be no order as to costs. Consequently, CMP No.15130 of 2018 is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,  
State of Tamil Nadu  
Rural Development and Panchayat Raj Department  
Fort St. George  
Chennai 600 009.

2. The District Collector  
Neelagiri District at  
Udhagamandalam.

3. The Commissioner  
Gudalur.

+1cc to Mr.V.Jayaprakash Narayanan, Spl.G.P. , SR.No. 63161

+1cc to Mr.S.P.Sudalaiyandi , Advocate SR.No. 63352

W.A.No.1882 of 2018

ASK(10/10/2018)



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