

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.07.2018

CORAM

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

W.P.Nos.29235 to 29242 of 2015  
and  
M.P.Nos.1 to 1 & 2 to 2 of 2015  
and  
W.M.P.Nos.29217 to 29224 of 2016

Muthamma.K ..Petitioner in W.P.No.29235 of 2015  
D.Uthimeri ..Petitioner in W.P.No.29236 of 2015  
N.Basavanna ..Petitioner in W.P.No.29237 of 2015  
D.Revanna ...Petitioner in W.P.No.29238 of 2015  
K.Madevasetty ..Petitioner in W.P.No.29239 of 2015  
D.Gopamma ..Petitioner in W.P.No.29240 of 2015  
J.Madevappa ..Petitioner in W.P.No.29241 of 2015  
M.Malla ..Petitioner in W.P.No.29242 of 2015

vs

1.The Director of Sericulture,  
Sericulture Department  
Nethaji Nagar, Hasthampatti,  
Salem.

2.The Assistant Director  
Sericulture Department  
Madhahalli  
Erode District.

.. Respondents in all W.Ps.

Prayer in all WPs: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the second respondent in Na.Ka.No.827/A/2011, dated 31.05.2012, and quash the same.

For Petitioner  
in all W.Ps.

: Mr.Mukund R.Pandiyan

For Respondents  
in all W.Ps.

: Mrs.A.Srijayanthi  
Special Government Pleader

### C O M M O N O R D E R

The order of recovery issued against the writ petitioners to recover the excess amount paid to them, are under challenge in these writ petitions.

2. The writ petitioners are employed as daily wage workers in the Sericulture Department and their services were regularized and brought under the regular establishment. However, the impugned order of recovery is issued stating that when the petitioners were served as daily wages workers, excess salary was paid to them. On account of an audit objection, the order of recovery has been issued to recover the excess amount already paid to the daily wages workers.

3. On perusal of the impugned order, it is seen that the excess amount of salary has been paid with effect from 01.04.2004, onwards. However, the order of recovery has been passed in the year 2012, based on the audit objection.

4. This Court is of an opinion that even if excess amount of salary had been paid in the year 2004, the same cannot be recovered after a lapse of long years, in view of the legal principles settled by the Hon'ble Supreme Court of India in the case of State of Punjab and others v. Rafiq Masih (White Washer) & others reported in (2015) 4 SCC 334. The relevant 18th paragraph of the Judgment is extracted here under:

"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 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."

5. As per the legal principles settled by the Hon'ble Supreme Court of India, excess amount of salary, if any paid to the employees, who are working in Class - IV cannot be recovered. The errors if any committed in fixing the pay alone can be corrected. The excess already paid cannot be recovered from Class - IV employees.

6. In view of this fact that the impugned order passed is in violation of the legal principles settled by the Apex Court of India and accordingly, the impugned orders of recovery passed by the respondent in proceedings dated 31.05.2012, are hereby quashed.

7. Accordingly, the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nmm/stm

To

1.The Director of Sericulture,  
Sericulture Department  
Nethaji Nagar, Hasthampatti,  
Salem.

2.The Assistant Director  
Sericulture Department  
Madhahalli  
Erode District.

+lcc to the Government Pleader, S.R.No.45756

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GJII (CO)  
GSP (01/08/2018)



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