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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2018

CORAM

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

W.P.(MD) No.12913 of 2011

and

M.P(MD)No.2 of 2011

G.Rajan

... Petitioner

-vs-

1.The Government of Tamil Nadu,
Rep. By its Principal Secretary,
Finance (Pay Cell) Department,
Fort St. George,
Chennai-600 009.

2.The Director General of Prisons,
Chennai-600 008.

3.The Superintendent of Jails,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the Impugned Order of recovery in No.4211/Ki.Si.s/2011 dated 08.09.2011 on the file of the Respondent No.3 and quash the same as illegal.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondents

: Mr.M.Muthu,
Addl. Govt. Pleader

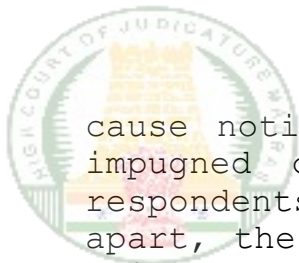
O R D E R

The order of recovery issued by the third respondent, vide proceedings, dated 08.09.2011 is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the petitioner made a submission that the writ petitioner was appointed as Warder Grade-II at Kovilpatti Sub Jail and he was sanctioned with the pay of Selection Grade with effect from 30.03.2008. Accordingly, the pay was re-fixed as per the Government Order in force. However, there was an Audit objection and based on that, the pay of the writ petitioner was revised and an order of recovery was passed to recover the excess pay granted to the writ petitioner.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel for the petitioner states that no show



cause notice was issued to the writ petitioner before passing the impugned order of recovery and therefore, the actions of the respondents are in violation of principles of natural justice. This apart, the writ petitioner was holding the post of Grade-II Warder, which falls in Group-IV category. Thus, no recovery can be imposed.

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4. The learned Additional Government Pleader appearing on behalf of the respondents opposed the said contention by stating that an error in the fixation was identified and accordingly, the competent authorities revised the pay as applicable to the writ petitioner and imposed the recovery. Therefore, there is no irregularity in respect of the order impugned.

5. This Court is of the opinion that the authorities competent are empowered to correct the mistakes, if any, in respect of the fixation of pay. However, the amount already paid shall not be recovered in view of the fact that there was no misrepresentation on the part of the employee nor it was granted at the instance of the employee. In the present case, the writ petitioner was employed as Grade-II Warder and therefore, the recovery of excess amount cannot be effected. In this regard, the Hon'ble Supreme Court of India also enumerated the legal principles in the case of *State of Punjab v. Rafiq Masih* reported in (2015) 4 Supreme Court Cases 334 in paragraph No.18 of the judgment is relevant and the same is extracted hereunder:-

"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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

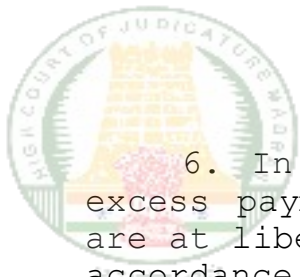
(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(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 harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."



6. In respect of Group-III and IV employees, the recovery of excess payment is impermissible. However, the authority competent are at liberty to correct the scale of pay of the writ petitioner in accordance with the Government Orders and the Pay Rules in force.

7. In view of these factors, the order impugned passed by the third respondent, vide proceedings No.4211/Ki.Si.2/2011, dated 08.09.2011 is quashed in respect of the recovery. Fixation of pay can be corrected in accordance with the Government Orders and the Pay Rules in force. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1.The Principal Secretary,
Finance (Pay Cell) Department,
Fort St. George,
Chennai-600 009.

2.The Director General of Prisons,
Chennai-600 008.

3.The Superintendent of Jails,
Central Prison,
Palayamkottai,
Tirunelveli District.

+1cc to M/S.Special Government Pleader,SR.43983

+1cc to Mr.T.LAJAPATHI ROY,Advocate,SR.43706

W.P. (MD) No.12913 of 2011
23.01.2018

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