



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.16345 of 2014

and

M.P (MD) .Nos.1 and 2 of 2014

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A.Kulandaisamy

... Petitioner

-Vs-

1.The Director

Department of Sericulture
Annaimeadu, Salem 636 001

2.The Assistant Director

Department of Sericulture
No.6, V.O.C.Street
Trichirappalli 620 001

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent in proceedings in Se.Mu.Na.Ka.No.3408/Aa/2012 dated 13.06.2013 and quash the same insofar as the petitioner is concerned and direct the respondents to refund the recovered amount to the petitioner and consequently to pay the Employees' Provident Fund amount in entirety with interest.

For Petitioner : Mr.G.Thalaimutharasu

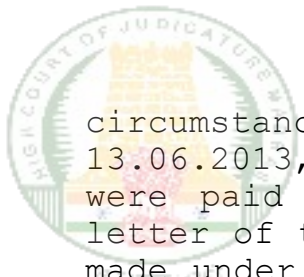
For Respondents :Mr.S.Dhayalan

Government Advocate

ORDER

The Writ petition has been filed to call for the records on the file of the 2nd respondent proceedings in Se.Mu.Na.Ka.No.3408/Aa/2012 dated 13.06.2013 and quash the same insofar as the petitioner is concerned and direct the respondents to refund the recovered amount to the petitioner and consequently to pay the Employees' Provident Fund amount in entirety with interest.

2.The petitioner was appointed as Sericulture worker on daily wages from the year 1980 to 2010. On completion of 10 years of service, the daily wages employees including the petitioner were given regular appointment as Sericulture workers. The petitioner was working under the Assistant Director and paid a special time scale of pay of Rs.2500/-Rs.5000/- + Grade pay of Rs.500/-. Thus, the petitioner was receiving a total salary of Rs.5,500/- per month from the date of his regular appointment and allowed to work till the age of 60 years and retired from service on 30.06.2013. In this



circumstance, the Assistant Director has passed an order on 13.06.2013, stating that the daily wagers including the petitioner were paid daily wage along with Dearness Allowance based on the letter of the Director and now, it is found that the excess payment made under Dearness Allowance from 01.04.2004 to 31.08.2011 and the same sought to be recovered from the individual concerned and remit to the Government Account. Based on the internal communication between the Assistant Director and the Director, recovery order has been passed. The learned counsel for the petitioner would submit that the petitioner does not enjoy any pensionary benefits and he was eligible only to receive Employees Provident Fund. Aggrieved against the said order, the petitioner is before this Court.

3.The second respondent filed a counter affidavit. The learned Government Advocate would submit that along with daily wages Dearness Allowance were paid. By mistake excess amount of Dearness Allowance have been paid from 01.04.2004 to 31.08.2011, which was found in the Audit Report. In the impugned order, the details of arriving at the payment of excess amount was explained. Hence, the second respondent is entitled to recover the excess amount.

4.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

5.Perusal of record shows that no notice has been served to the petitioner before passing the order of recovery. Admittedly, the petitioner was working on daily wage basis and he is the last grade servant and he is not even provided any pensionary benefits. The order of recovery has been passed without any notice which is contrary to law.

6.The issue involved in this Writ petition is no longer *res integra*. In view of the judgement of the Hon'ble Supreme Court reported in **(2009) 3 SCC 475 in Syed Abdul Qadir Vs.State of Bihar** and the Judgment of this Court reported in **(2010) 3 MLJ 934 in P.Subramanian Vs. Government of Tamil Nadu, represented by the Secretary to Government Adi Dravidar & Tribunal Welfare Department, Chennai and others** and another Judgment of this Court reported in **(2006) 1 M.L.J.143 in D.Palavesamuthu Vs. Tamil Nadu Administrative Tribunal, represented by its Registrar, Chennai and others**, wherein, it has been categorically held that any excess amount paid to the Government employee, when there is no fault on the part of the employee, the said excess amount cannot be recovered from the employee.

7.In view of the above, the order passed by the second respondent in Se.Mu.Na.Ka.No.3408/Aa/2012, dated 13.06.2013 is set aside and this Writ petition is allowed. The respondents are directed to refund the recovered amount to the petitioner within a period of eight weeks from the date of receipt of a copy of this



order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

Msa

To

1.The Director
Department of Sericulture
Annaaimedu, Salem 636 001

2.The Assistant Director
Department of Sericulture
No.6, V.O.C.Street
Trichirappalli 620 001

+1 CC to SPL.GP (SR-105553[F] dated 18/12/2019)

+2 CC to Mr.G.THALAIMUTHARASU, Advocate (SR-105830[F] dated 19/12/2019)

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and

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