



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) No.2135 of 2013

and

M.P. (MD) No.1 of 2013

R.Kamaraj

... Petitioner

vs.

1. The Chief Executive Officer
Khadi and Village Industries Board
Kuralagam, Chennai-600 108

2. The Regional Deputy Director
Khadi and Village Industries
Trichy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.9626/2007 E1, dated 17.10.2012, quash the same.

For Petitioner : Ms.P.Kalaiyarasi Bharathi

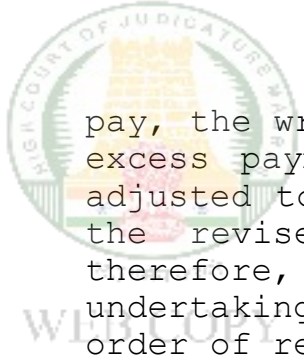
For Respondents : Mr.G.Karnan

O R D E R

The order of recovery dated 17.10.2012 issued by the second respondent is under challenge in the present writ petition.

2. The writ petitioner was holding the post of Assistant Director of Khadi and Village Industries Board and it is brought to the notice of this Court that the writ petitioner was a self-drawing officer during the relevant point of time. This apart, the counter affidavit filed by the second respondent categorically states that the writ petitioner was retired from service on 28.02.2013 on attaining the age of superannuation. While the writ petitioner was in service and working as Assistant Director of Khadi and Village Industries Board, at Karur, his pay was fixed at Rs.8,275/- from 01.01.1996. Accordingly, the writ petitioner received his salary with an undertaking that "any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment deducted in the light of discrepancies notice subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise". As per the said undertaking the impugned order of recovery has been passed against the writ petitioner in proceedings, dated 17.10.2012.

3. This Court is of the considered opinion that the writ petitioner was working in the cadre of Assistant Director and during the relevant point of time, he himself has sanctioned the revision of scale of pay as applicable. At the time of revising the scale of



pay, the writ petitioner gave an undertaking that he will refund the excess payment, if any, found subsequently or the excess payment adjusted towards future payments and based on the said undertaking, the revised salary was disbursed to the writ petitioner and therefore, the writ petitioner cannot go back contrary to the undertaking given by him for the purpose of assailing the impugned order of recovery.

4. Only in cases, where the excess amount of recovery imposed at the instance of the Establishment, the Court can grant the relief of quashing the recovery orders. Wherever there is a misrepresentation or fixation of pay by the self-drawing officer or if there is any undertaking given by the official concerned to refund the excess amount, then the Courts would not grant any relief in respect of the recovery orders by the competent authority. In the present case, during the relevant point of time, the writ petitioner was a self-drawing officer and he revised his scale of pay and drawn the salary. This apart, the writ petitioner has given an undertaking to refund the excess payment, if any, found subsequently or the excess payment adjusted towards future payments. Under these circumstances, there is no infirmity in the impugned order passed by the second respondent and the writ petitioner is liable to repay the excess payment already received by him.

5. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Executive Officer,
Khadi and Village Industries Board,
Kuralagam, Chennai-600 108.

2. The Regional Deputy Director,
Khadi and Village Industries,
Trichy.

+1 CC to M/s.P.KALAIYARASI BHARATHI, Advocate (SR-66827[F] dated 04/06/2019)

+1 CC to Mr.G.KARNAN, Advocate (SR-66979[F] dated 06/06/2019)

W.P. (MD) No.2135 of 2013

and

M.P. (MD) No.1 of 2013

03.06.2019