

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.15345 of 2005

1.Y.Krishnappa
2.M.Aswathanarayana
3.A.Rajendran
4.F.Mumtaj
5.N.Asaithangai
6.K.Bharathi
7.S.Rani

...Petitioners

Vs

The Block Development Officer,
Hosur Block,
Dharmapuri District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of writ of certiorarified mandamus to call for the records relating to the proceedings of the Block Development Officer, Hosur in Na.Ka.No.1057/05/A4 dated 22.03.2005 quash the same and consequently direct the respondent herein not to demand the excess cost spent by the petitioners in Noon Meal Centres for the years 2002-2003.

For Petitioners : Mr.D.Arunmozhi

For Respondent : Mr.K.Magesh

Special Government Pleader

सत्यमेव जयते
O R D E R

The relief sought for in this writ petition is to quash the proceedings dated 22.03.2005 issued by the respondent and consequently, direct the respondent not to demand the excess cost spent by the petitioners in Noon Meal Centres for the year 2002-2003.

2.The learned counsel for the petitioner submitted that the petitioners were working as Noon Meal Organisers in various Panchayat Union Elementary and Government High Schools in Hosur Block. The petitioners spent the amount as per the guidelines issued by the Government and also instructions of the Block Development Officer. During the year 2002-2003, the Assistant

Director of Department Audit, Dharmapuri conducted the audit in various centres and submitted a report that in various centres the Noon Meal Organisers spent excess amount exceeding 90% of the food cost for the previous monthly average. Hence, the respondent without issuing any notice straight away passed the order of recovery on 22.03.2005. Challenging the same, the present writ petition.

3. The learned Special Government Pleader submitted that the Assistant Director of Department Audit, Dharmapuri conducted the audit in various Noon Meal Centres at Hosur Block and they have made an objection that excess amount exceeding 90% of the food cost was spent and therefore, shortage of amount has been found in various centres. Subsequently, they were not able to find out the exact quantity and quantum of the shortage, therefore no case is made out. However, this writ petition is pending from the year 2005 and they are not able to close the case against the petitioners 1 and 3, 5, 6 and 7. The learned counsel further submitted that the petitioners 2 and 4 died.

4. The learned counsel relied on the judgement in State Of Punjab & Ors vs Rafiq Masih (White Washer) reported in (2015) 4 SSC 334 held as follows :

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 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. In my considered opinion that the judgement cited supra is not applicable to the facts of the case. The main grievance of the petitioner is that without issuing notice, the respondent straight away passed the order of recovery. As stated by the learned Special Government Pleader, since the writ petition is pending from the year 2005, they are not able to proceed with the matter further.

6. In the light of the above facts and circumstances, the impugned order dated 22.03.2005 is liable to be set aside. The respondent is directed to issue notice to the petitioners 1, 3, 5, 6 and 7 before issuing recovery proceedings and pass suitable orders in accordance with law.

7. With the above direction, the writ petition is disposed of insofar as the petitioners 1, 3, 5, 6 and 7 are concerned. The writ petition is dismissed as abated insofar as the petitioners 2 and 4 are concerned. However, there shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Block Development Officer,
Hosur Block,
Dharmapuri District.

+1 CC to Mr.R. Arunmozhi, Advocate sr 40916.
+1 CC to Mr.K.Magesh, Advocate sr 41066.

W.P.No.15345 of 2005

AD(CO)
SP(20/01/2021)