



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) No.7680 of 2013

and

M.P. (MD) No.2 of 2013

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J.Adline Festus

... Petitioner

**vs.**

1.The Chief Regional Manager,  
The Oriental Insurance Company Limited,  
Regional Office,  
II Floor, May Flower Building,  
72, Dr.Balasundaram Road,  
Coimbatore.

2.The Divisional Manager,  
The Oriental Insurance Company Limited,  
Sivasakthi Building, Tirunelveli.

3.The Senior Branch Manager,  
The Oriental Insurance Company Limited,  
Branch Office, D.D.J. I Floor,  
Nagercoil, Kanyakumari District.

... Respondents

**PRAYER:** Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in connection with the impugned order passed by the second respondent vide his proceedings No.Nil, dated 29.01.2013 and quash the same as illegal.

For Petitioner : Mr.S.Bharathy Kannan  
For R-1 : Mr.K.Balasubramanian  
For R2 and R3 : No Appearance

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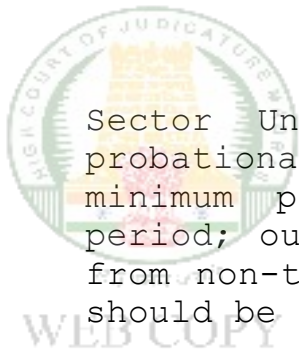
### **O R D E R**

This Writ Petition is filed to quash the impugned order passed by the second respondent, dated 29.01.2013.

2.Heard Mr.S.Bharathy Kannan, learned Counsel for the petitioner and Mr.K.Balasubramanian, learned Counsel for the first respondent.

3.The petitioner was appointed as Probationary Development Officer Grade-III (Marketing Department) in the third respondent Insurance Company. The respondent Insurance Company is a Public

<https://hcmiscourt.gov.in/compas>



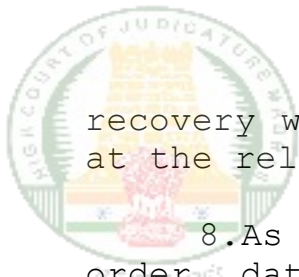
Sector Undertaking. The petitioner states that during the probationary period, the petitioner was expected to procure a minimum premium income of Rs.2.5 lakhs during the probation period; out of the target, atleast a sum of Rs.10,000/- should be from non-traditional business; and at least 50% of target premium should be from other than motor business.

4.It is the case of the petitioner that his service was confirmed as Development Officer Grade-II with effect from 25.06.1993 and his basic pay was also fixed accordingly with permissible allowances. The petitioner was later promoted as Development Officer Grade-I with effect from 01.04.2002. However, by order, dated 10.05.2010, the first respondent directed the third respondent to recover a sum of Rs.16,460/- from the petitioner on the ground that the said sum should be recovered from the petitioner in connection with his performance in the year 2003-04. The petitioner challenged the said order in a Writ Petition in W.P.(MD)No.10187 of 2010 and this Court has stayed that order.

5.Subsequently, by the impugned order, dated 29.01.2013, the second respondent issued another order of recovery directing that a sum of Rs.66,650/-, which was paid to the petitioner in connection with cost ratio operation from 2010-13, should be recovered from the petitioner. In short, by the impugned order, the petitioner was directed to remit a sum of Rs.66,650/-.

6.Though the petitioner has raised various grounds touching the merits and right to recover the money from the petitioner, this Court is of the view that the impugned order is liable to be set aside on the ground of violation of principles of natural justice. Even assuming that the petitioner is liable to be pay towards recovery on the basis of certain factual aspects, it should be verified and confirmed on the basis of documents. The recovery is in the nature of amount already paid to the petitioner, based on his performance previously. The recovery is from the amount, which the petitioner had received by way of conveyance allowance, entertainment allowance and M.V. Expenses. The entitlement of petitioner to receive the amount from the respondent appears to be subject to the certain conditions. Unless, the petitioner is given an opportunity to meet the issue on facts, the unilateral order of recovery without giving a fair opportunity to the petitioner is illegal and arbitrary and hence liable to be quashed.

7.This Court is the case of **D.Palavesamuthu vs Tamil Nadu Administrative Tribunal** reported in **(2006) 1 MLJ 143**, held that the reduction of pay or recovery without notice is *per se* invalid. The Honourable Supreme Court and this Court is consistent to take a similar view in similar circumstances, wherever, the order of



recovery was passed without giving an opportunity to the employee at the relevant point of time.

8.As a result, this Writ Petition is allowed and the impugned order, dated 29.01.2013, is set aside. However, the respondents are at liberty to proceed further, if they are advised so, after following the procedure and observing the principles of natural justice. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

Cmr

+1 CC to M/s.K.BALASUBRAMANIAN, Advocate ( SR-25086[F] dated 03/08/2021 )

+1 CC to M/s.S.BHARATHY KANNAN, Advocate ( SR-25123[F] dated 03/08/2021 )

Order made in  
W.P.(MD) No.7680 of 2013

02.08.2021

CN(13.08.2021) 3P 3C