



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.3267 of 2021

(Through Video Conference)

K.Sornapriya

...Petitioner

Vs.

1.The Principal Accountant
General (Civil Audit),
Tamil Nadu and Puducherry,
Lekha Pariksha Bhavan,
361, Anna Salai, Teynampet,
Chennai 600 018

2. The Deputy Commissioner (CT),
Madurai West,
Madurai, Madurai District.

3. The Assistant Commissioner (CT),
Thiruparangundram Assessment Circle,
Madurai, Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order of recovery passed by the 3rd respondent vide his proceedings in Na.Ka.No.531/2017/A2, dated 18.07.2017 and quash the same as illegal and consequently direct the respondents to repay the entire amount Rs.40,410/- recovered from the petitioner with 9% interest per annum and re-fix her basic pay as Rs.5660 + 2400 as it was on 01.04.2013 within the time frame that may be stipulated by this Court.

For Petitioner : M/s.B.S.Meltiue

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

O R D E R

The third respondent herein, through the impugned order dated 18.07.2017, had ordered for recovery on the ground that, the petitioner is not entitled for two increments; (i) for possession of degree qualification, since the scheme of higher start of pay to Graduate Junior Assistant/ Typist was dispensed with only from



01.04.2013 and (ii) the petitioner had joined as a Typist in the Commercial Taxes Department on 01.04.2013. The impugned order has been made pursuant to the audit objections placed by the first respondent herein.

2. On a perusal of the impugned order, it is seen that the third respondent herein had not extended any opportunity to the petitioner before ordering for recovery. There is no reference to the show cause notice also, calling for the petitioner's objections. This is one of the main ground raised by the petitioner in this writ petition.

3. On this short ground, the impugned order is liable to be interfered with. The calling for objections also gains significance in view of the ruling of the Hon'ble Apex Court in the **State of Punjab and others vs. Rafiq Masih** (White Washer's case) reported in (2015) 4 SCC 334, wherein it was held that the recovery from employees belonging to Class 3 and Class 4 services (Group C & Group D) is impermissible in law. When such a ground is available to the petitioner, he should be given an opportunity to raise such objections before such Authority..

4. In the light of the above observations that the impugned order is violating the principles of natural justice, the impugned order in Na.Ka.No.531/2017/A2, dated 18.07.2017 stands quashed. The respondents are at liberty to issue a show cause notice to the petitioner, calling for his objections, with regard to the proposed recovery and on receipt of such objections, the respondents shall proceed further, on his own merits and in accordance with law. The writ petition stands allowed with the above liberty. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

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+1 CC to M/s.SPL GP (SR-11510[F] dated 16/03/2021)

Order made in
W.P. (MD) No.3267 of 2021
Dated:15.03.2021

A5(26/02/2021) 3P 5C