



W.P.No.2548 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 14.09.2022

ORDER PRONOUNCED ON : 21.09.2022

CORAM:

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.2548 of 2011

M.Essakimuthu

... Petitioner

vs.

1.The Government of Tamil Nadu,
Rep. through its Secretary,
Rural Development Department,
Chennai.

2.The Commissioner/Director,
Rural Development and Panchayat Raj,
Chennai – 15.

3.The District Collector,
District Collectorate Office,
Nagapattinam,
Nagapattinam District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the third respondent herein செ.மு.ந.க.எண்.5980/௨௭.வ.4/2009 dated 01.11.2010 and quash the same as illegal.



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For Petitioner : Mr.AR.Balaji for
Mr.V.Meenakshi Sundaram

For R1 to R3 : Mr.M.Bindran
Additional Government Pleader
* * * * *

ORDER

This writ petition is filed for the Writ of Certiorari, calling for the records relating to the proceedings of the third respondent herein செ.மு.ந.க.எண்.5980/உள்.வ.4/2009 dated 01.11.2010 and quash the same as illegal.

2.The petitioner was appointed as Steno-typist (Grade III) vide order dated 20.06.2009. Though the petitioner was selected in the batch 2007-2008, the appointment order was issued to him after one year. By the proceedings dated 24.07.2009 the third respondent fixed the of pay of the petitioner as Rs.5200 – 20200 + Grade Pay Rs.2,400. The petitioner's salary along with other benefits was Rs.7440 + 2400 = 9840. The third respondent vide impugned proceedings dated 01.11.2010 ordered for recovery of Rs.48,155 in 40 installments on the ground that there was an error in fixation of pay scale. Aggrieved by the said order, the petitioner filed the above writ



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3.The respondents in their counter justified the impugned order and submitted that the refixation of pay was made as per the Government Order in G.O.Ms.No.234, Finance (P.C.) Department, dated 01.06.2009 and the relevant instructions and clarification issued thereunder. The respondents' further case was that the petitioner entered into the Government Service only on 29.06.2009 and as he was not in service on the date of implementation of the revised scale, he was not entitled to the pay of Rs.5200 – 20200 + Grade Pay Rs.2400.

4.Heard the learned counsel for the respective parties and perused the records.

5.The learned counsel for the petitioner submitted that the recovery of the excess payment as per the impugned proceedings was without notice and hence unsustainable. The learned counsel further submitted that the issue of recovery of excess payment is covered by catena of Judgements of Hon'ble Supreme Court and as such no longer res-integra.



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issue is no longer res-integra. The Judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and Others Vs. Rafiq Masih and Others*** reported in ***2015 4 SCC 334*** squarely covers the issue.

9.The Hon'ble Supreme Court in the above said Judgment has held as follows:

“18.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 hereinabove, we may as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the



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orders of recovery.

(iii) Recovery from the 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.”

10.It is pertinent to point out here that the above Judgment of the Hon'ble Supreme Court in ***Rafiq Masih*** case is followed in the case of ***Thomas Daniel Vs. State of Kerala*** reported in ***2020 LiveLaw (SC) 438***.



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11.The learned counsel for the petitioner relying on the above said directions of the Hon'ble Supreme Court submitted that the respondents cannot recover the excess payment made as this case is covered under Clause “A” of the above directions.

12.The learned Additional Government Pleader appearing for the respondents in contra submitted that due to inadvertent fixation of pay on misinterpretation of G.O.Ms.No.234, Finance (Pay Cell) Department dated 01.06.2009 and the instruction issued thereunder, it was necessary to recover the erroneous payment made. The learned Additional Government Pleader further submitted that the mistake was found out within a short period of time i.e. 1 ½ years and therefore the impugned order is sustainable.

13.From the submissions of the learned Additional Government Pleader as also the averments made in paragraph No.6 of the counter it is clear that the erroneous fixation of pay was only due to the mistake committed by the respondents and the petitioner had absolutely no role to play in such erroneous pay fixation. The question of the error being found out within a short period of time is of no relevance for the simple reason that



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the Hon'ble Supreme Court in *Rafiq Masih* case has clearly laid down that the recovery is impermissible for Group C and Group D employees. This Court is bound by the above Judgment of the Hon'ble Supreme Court and therefore the impugned order is not sustainable. I am therefore of the view that the impugned order is liable to be set aside.

14. In the light of the above discussion, the above writ petition is allowed and the impugned order is set aside. However there shall be no order as to costs.

21.09.2022

Index : Yes / No
Internet : Yes / No
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To

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Rural Development and Panchayat Raj,
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Nagapattinam,
Nagapattinam District.



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N.MALA, J.

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PRE DELIVERY ORDER
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