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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.17474 OF 2020

AND

W.M.P.NO.21660 OF 2020

K.Sudhapriya

... Petitioner

.Vs.

1. The District Adi Dravidar and
Tribal Welfare Officer,
Vellore District.

2. The Special Tahsildar (ADW),
Vellore - 01.

... Respondents

PRAYER:-

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of recovery issued by the second respondent in Na.Ka.Pi/119/2020 dated 25.09.2020 and set aside the same.

For Petitioner : Mr.T.Sellapandian

For Respondents : Mrs.S.Anitha
Special Government Pleader

O R D E R

The relief sought for in the writ petition to call for the records relating to the impugned order of recovery issued by the second respondent in Na.Ka.Pi/119/2020 dated 25.09.2020 and set aside the same.

2. Brief facts of the case:

(i). Initially, on 14.06.2006 the petitioner was joined as Matron in the category of secondary grade, in the Government



Girls Hostel (ADW), Vellore under the control of respondents' Department and due to administrative reasons, as per the order of the second respondent in Na.Ke.1/20821/2013/-1, dated 31.05.2017, she was engaged in the post of Tutor cum Matron as Additional charge in the category of BT grade, which is higher than the petitioner's regular post, in Government Girls Hostel (ADW), Pillanthupatti from 01.06.2017 to 01.04.2018 and the petitioner had been paid a sum of Rs.1,02,686/- as Additional Charge Allowance with additional to her regular salary for the period from 01.06.2017 to 30.04.2018.

(ii). Thereafter, without issuing show cause notice and providing opportunity of hearing, based on G.O.(Ms).No.122 P & AR Department dated 03.10.2011, the second respondent issued order of recovery in Na.Ka.A.No.119/2020, dated 22.07.2020, to recover the above said sum of Rs.1,02,686/- from the petitioner and if she fails to repay the said amount, it will be deducted in her monthly salary in installment manner. Thereafter, the petitioner has made a representation dated 03.08.2020 to the respondents, by raising objections and requesting to give exemption from recovery of the sum of Rs.1,02,686/-. Without considering the petitioner's representation, the second respondent has issued impugned order of recovery in Na.Ka.Pi/119/2020 dated 25.09.2020, to recover the amount by deducting from the petitioner's regular salary in 30 monthly installments from September 2020 onwards. Again, the petitioner has made a representation dated 27.09.2020, however, the respondents have started deduction. Hence, the writ petition.

3(i). The learned counsel appearing for the petitioner would submit that the petitioner has been paid a sum of Rs.1,02,686/- as Additional Charge Allowance with additional to her regular salary for the period from 01.06.2017 to 30.04.2018. Thereafter, without giving opportunity to the petitioner, the second respondent has issued impugned order of recovery in Na.Ka.Pi/119/2020 dated 25.09.2020, to recover the said amount by deducting from the petitioner's regular salary in 30 monthly installments from September 2020 onwards and hence, the petitioner has made a representation but the same has not been considered.

3(ii). Further, the learned counsel for the petitioner would submit that the petitioner is entitled to receive Additional Charge Allowance under Rule 49(4) of Fundamental Rules, which states as follows:

"Additional Post equivalent to the regular post (i) when additional Charge arrangements are in respect of different territorial jurisdictions the



post are differently independent. In such cases additional pay is admissible.”

Further, as per G.O.Ms.No.286 Finance (Pension) Department, dated 28.08.2018, as a group C service employee, the learned counsel for the petitioner is requesting to give exemption from recovering excess payment viz., Rs.1,02,686/-, which was paid as Additional Charge Allowance to the petitioner.

4. The Government Pleader appearing for the respondents has filed a counter affidavit by stating that total sum of Rs.1,02,686/- was paid to the petitioner towards the additional charge allowance and bills for the above payment were sent to the Accountant General (Audit), Chennai, for inclusion of audit. After completion of audit work the Accountant General (Audit) has raised the audit objection that the additional charge allowance paid to the petitioner was excess and the same should be recovered. In this regard, as per the instructions of Accountant General (Audit) as well as the first respondent, the second respondent had issued show cause notice to the petitioner vide letter Na.Ka.A1/119/2020, in turn, the petitioner had given her explanation on 03.08.2020 and raised her objection for the said recovery, but the petitioner had categorically mentioned that there is no explanation seeking for the said recovery. Consequently, the second respondent had passed orders to recover sum of Rs.1,02,686/- as excess amount paid to the petitioner in 30 equal monthly installments.

5. Heard the learned counsel on either side and perused the materials placed on record.

6. Considering the fact that the petitioner has placed all the relevant materials before the respondents and in the light of the G.O.Ms.No.286 Finance (Pension) Department dated 28.08.2018, this Court is inclined to pass the following order:

(i). Impugned order of recovery passed by the second respondent is quashed and the first respondent is directed to consider the petitioner's representation afresh, after giving opportunity to the petitioner.

(ii). The petitioner is also directed to furnish additional particulars to the first respondent within a period of one week from the date of receipt of a copy of this order and thereafter, the first respondent is directed to pass orders in accordance with law, as early as possible within a period of twelve weeks from the date of receipt of a copy of this order.



7. With the above directions this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition stands closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Dua

To

1. The District Adi Dravidar and
Tribal Welfare Officer,
Vellore District.
2. The Special Tahsildar (ADW),
Vellore - 01.

+1cc to the Government Pleader, S.R.No.23036

W.P.NO.17474 OF 2020 AND
W.M.P.NO.21660 OF 2020

SVI (CO)
PBS/22/04/2022