

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-06-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.26166 of 2014

And

MP No.2 of 2014

Ramakka

.. Petitioner

vs.

1. The Director,
Department of Sericulture,
Annaaimedu,
Salem - 636 001.
2. The Assistant Director,
Department of Sericulture,
Kolatti,
Krishnagiri District - 635 107

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the second respondent issued in Proceedings Na.Ka.No.146/A/ 2011 dated 25.07.2013 and quash the same in so far as the petitioner is concerned and direct the respondents to refund the recovered amount to the petitioner and consequently to pay the Employees' Provident Fund amount in entirety with interest.

For Petitioner : Mr.M.Padmanaban for
M/s.Lesi Saravanan.

For Respondents : Ms.S.Anitha,
Special Government Pleader.

O R D E R

The order of recovery issued by the second respondent in proceedings dated 25.07.2013, is under challenge in the present writ petition.

2. The writ petitioner was initially engaged as Daily Wage employee as Sericulture Worker and subsequently, she was absorbed as a regular employee in the Department of Sericulture.

3. The petitioner states that she was receiving regular salary after her appointment. She was allowed to work till she attained the age of 60 years and retired from service on 01.06.2014.

4. The petitioner was working in a non-pensionable service and therefore, eligible to receive Employees Provident Fund amount. Accordingly, the writ petitioner was receiving the Employees Provident Fund amount.

5. The Assistant Director passed the impugned order on 25.07.2013 stating that the excess payment of Dearness Allowance has been made for the period from 01.04.2004 to 31.08.2011 to the daily wage employees. The amount of Dearness Allowance paid to the writ petitioner in excess was calculated as Rs.32,423/-. Thus, the said amount was sought to be recovered.

6. The learned Special Government Pleader appearing on behalf of the respondents made a submission that the said excess amount as per the recovery order had already been recovered from the writ petitioner and therefore, the writ petition is to be rejected.

7. The issue to be considered is that whether the recovery of excess payment of Dearness Allowance can be recovered from the employee, who is not responsible for receiving any such excess Dearness Allowance.

8. The writ petitioner was working as Sericulture Worker under Class-IV category and she is not responsible for grant of excess Dearness Allowance. There is no misrepresentation or otherwise on the part of the writ petitioner.

9. The respondents have calculated the Dearness Allowance as applicable to the writ petitioner and disbursed the same. While-so, the excess amount of Dearness Allowance paid for the period from 01.04.2004 to 31.08.2011, cannot be recovered as such recovery would cause hardship to the writ petitioner, who was working as Class-IV employee.

10. The recovery of excess amount, already paid, from the Class-IV employee would result in hardship and therefore, this Court is of the considered opinion that the excess amount even if paid to the employees from the year 2004, the said amount cannot be recovered from the employees during the fag end of their retirement.

11. In the present case, the recovery was effected

during the fag end of the retirement of the writ petitioner. Thus, this Court is inclined to consider the present writ petition. Accordingly, the impugned order passed by the second respondent in proceedings Na.Ka.No.146/A/2011 dated 25.07.2013 is quashed and the respondents are directed to repay the excess amount already recovered from the writ petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Director,
Department of Sericulture,
Annaaimedu,
Salem - 636 001.
2. The Assistant Director,
Department of Sericulture,
Kolatti,
Krishnagiri District - 635 107.

+1cc to M/s.Lesi Saravanan, Advocate, S.R.No.40983

+1cc to the Government Pleader, S.R.No.40778

WP 26166 of 2014

SVI(CO)
UMA(11/07/2022)