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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.25381 of 2017
and
W.M.P.No.26814 of 2017

K.Sengottuvel

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep. by the Principal Secretary
to Government,
Fort St. George, Chennai - 600 009.

2.The Director of Rural Development,
Panagal Buildings, Saidapet,
Chennai - 600 015.

3.The District Collector,
Salem District,
Salem.

4.The Commissioner,
Sankari Panchayat Union,
Sankari, Salem District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.968/2016/A1, dated 29.08.2017 passed by the 4th respondent, quash the same and consequently direct the respondents to continue the payment of selection grade pay as per the Letter No.63305/Pay Cell/2010-1 dated 08.11.2010 and G.O.Ms.No.65, Finance (Pay Cell) Department dated 26.02.2011 issued by the 1st respondent.

For Petitioner : Mr.R.T.Vishnu
for Mr.N.Manokaran

For R1 to R3 : Mr.P.Ganesan,
Government Advocate

For R4 : No Appearance



ORDER

Heard Mr.R.T.Vishnu, learned counsel for the petitioner and Mr.P.Ganesan, learned Government Advocate appearing for the respondents 1 to 3.

2. Though the name of the fourth respondent is printed in the cause list, none appears on their behalf and no counter has also been filed till date.

3. The petitioner herein, who is a Driver working under the fourth respondent, has been served with the impugned order dated 29.08.2017, stating that during the audit objection conducted for the years 2013 to 2016, it was found that the petitioner's pay scale was wrongly fixed in the selection grade by the fourth respondent and therefore, they have sought for recovery of the excess payment made.

4. The Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334, has categorically held that recovery from employees, particularly when the mistake of excess payment was on the part of the employer, is impermissible in law. The relevant portion of the order reads 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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

(iii) Recovery from 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



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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."

5. Since the impugned order admits that the mistake of wrong payment was on the part of the fourth respondent and also since the petitioner herein is an employee belonging to Class-IV category, recovery of such excess payment is impermissible in law, in view of the ratio laid down by the Hon'ble Supreme in the White Washer's case (supra).

6. In the light of the above observations, the impugned order dated 29.08.2017 passed by the fourth respondent herein is quashed. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

hvk

To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Director of Rural Development,
Panagal Buildings, Saidapet,
Chennai - 600 015.

3.The District Collector,
Salem District, Salem.

4.The Commissioner,
Sankari Panchayat Union,
Sankari, Salem District.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.5358

+lcc to the Government Pleader, S.R.No.5682,5700

W.P.No.25381 of 2017

and

W.M.P.No.26814 of 2017

PCH(CO)

SB(07/02/2022)