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W.P.(MD)NO.21473 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.21473 of 2022

A.Jeyaraman

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Grama Bank,
Head Office,
Yercaud Main Road,
Hasthampatti, Salem – 636 007.

2. The Assistant General Manager,
HRM Department,
Tamil Nadu Grama Bank,
Head Office, Yercaud Main Road,
Hasthampatti, Salem – 636 007.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the settlement order dated 31.05.2022 bearing No.HO/HRM/408/2022-23 issued by the 2nd respondent herein and quash the impugned recovery of Rs.72,540.42 towards the Promotion Fitment and consequently directing the respondents to disburse the above amount to the petitioner.



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W.P.(MD)NO.21473 OF 2022

For Petitioner : Mr.P.Subbiah

For Respondents: Mr.N.Dilipkumar

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner joined the respondent bank as Office Attendant in ' D ' group in the year 1985. He was promoted as Office Assistant on 01.04.2011. At the time of promotion, his scale of pay was fixed at Rs.15,800/-. It was later realised that this fixation was erroneous and re-fixation was done in August 2015. The petitioner reached the age of superannuation on 31.05.2022. While disbursing his retirement benefits, a sum of Rs.72,540/- was withheld on the ground that it was an excess payment made to him. Challenging the said act of withholding and seeking disbursement of the said amount, this writ petition has been filed.



3. The respondents have filed a detailed counter affidavit. The learned Standing counsel took me through its contents.

4. The learned Standing counsel would point out that fixation of the writ petitioner's pay in the promotional post of Office Assistant was erroneous and that it was subsequently corrected. The staff association have already moved the Industrial Tribunal and that it is pending in I.D.No.66 of 2017. It is also stated that the petitioner was put on notice about the re-fixation even in the year 2016 and that therefore it is not open to the petitioner to complain at this point of time. It is also pointed out that the petitioner is being paid a sum of Rs.22,13,023/- towards retirement benefits and that therefore, withholding a sum of Rs.72,540/- which was made as an excess amount cannot be said to be erroneous. He pressed for dismissal of this writ petition.

5. I carefully considered the rival contentions and went through the materials on record.



6. It is not the case of the respondents that the petitioner committed an act of misrepresentation leading to erroneous pay fixation. The management fixed the petitioner's pay in the promotional post. They sought to revise the same, some four years later. The recovery was not made thereafter. The recovery is sought to be made only when the petitioner reached the age of superannuation. The petitioner has to succeed on two counts. The case on hand is squarely covered by the decision of the Hon'ble Apex Court in the decision reported in **(2015) 4 SCC 334 (State of Punjab V. Rafiq Masih)**. Paragraph No.12 of the said decision reads as follows:-

“12. 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:



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(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 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. ”



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7. The petitioner belongs to group ' D ' service. The recovery is sought to be made from the petitioner's gratuity amount following his retirement. Thus Clause 1, 2 and 3 of paragraph No.12 of the aforesaid decision are clearly attracted to the case on hand. That apart, withholding the amount of the group ' D ' employees is impermissible in law. For both the reasons, the impugned order passed by the respondents withholding the amount in question is set aside. The respondents are directed to disburse the withheld amount of Rs.72,540/- to the petitioner forthwith and without any delay.

8. This writ petition stands allowed. No costs.

12.10.2022

Index : Yes / No

Internet : Yes/ No

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To:

1. The Chairman,
Tamil Nadu Grama Bank,
Head Office,
Yercaud Main Road,
Hasthampatti, Salem – 636 007.
2. The Assistant General Manager,
HRM Department,
Tamil Nadu Grama Bank,
Head Office, Yercaud Main Road,
Hasthampatti, Salem – 636 007.



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G.R.SWAMINATHAN,J.

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