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W.P. No. 4583 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM :

**THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.4583 of 2012

T.David Shanmugam

... Petitioner

Vs.

The Chief Engineer,
Water Resource Department, (PWD),
Chennai Region,
Chepauk, Chennai – 600 005.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari , calling for the records relating to the respondent in his proceedings No.E1(1)/18851/2009 dated 25.03.2011 and followed in vide respondent letter No.E1(1)/18851/2009 C.R.3(Aa) dated 02.01.2012 (in view of the order of W.A.No.1302 of 2006 dated 09.03.2009).

For Petitioner : Mr.R.Y.George Williams

For Respondent : Mr.K.Surendran
Additional Government Advocate

ORDER

The petitioner has filed this writ petition, aggrieved by the proceedings No.E1(1)/18551/2009 dated 25.03.2011, issued by the respondent, as



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confirmed in letter No.E1(1)/18551/2009 C.R.3(Aa) dated 02.01.2012, ordering for recovery of an amount of Rs.66,659/- from the petitioner.

2. The undisputed fact is that the petitioner was paid 5% personal pay over the basic pay with effect from 01.08.1992 in terms of G.O.No.664 Finance (Pay cell) Department dated 24.08.1992. However, subsequently, it was noticed that the petitioner is not entitled for such personal pay and an objection was raised by the audit. Thereupon, the impugned proceedings dated 28.03.2011 was issued while, ordering for recovery of the amounts paid to the petitioner towards the 5% personal pay which stopping the further payments. Aggrieved by the same, the petitioner submitted her representation dated 29.03.2011, seeking clarification on the proposed recovery. But the same was rejected by the respondent through letter dated 02.01.2012. There is no dispute that the petitioner is not entitled for the payment of the 5% personal pay which was paid to the petitioner with effect from 01.08.1992. The only issue that arises for consideration is only with regard to the recovery of amount of Rs.66,659/- ordered through the impugned proceedings. Admittedly, the benefit of 5% personal pay was extended to the petitioner by the respondent on their own but not on the representation or

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misrepresentation of the petitioner. Once it is admitted that the said benefit of 5% personal pay was extended to the petitioner by the employer on their own, the right of the respondent to recover such amounts is concerned, the law is well settled. The Division Bench of this Court in W.A.No.1302 of 2006, had considered the very same aspect and by following the decision of the Honourable Apex Court, held as under:

“As far as the recovery of excess salary, or excess payment made to an employee, the law is well settled. If the excess payment is made on the misrepresentation of the employee concerned, the State Government would certainly be entitled to direct for recovery of such excess payment. On the other hand, if the excess payment is made by the State even though by of mistake, such excess payment cannot be recovered. To support the above, we may refer to the following Judgments in (1) Col. B. J. Akkara (Retd) Vs. Government of India and others resorted in (2006) 11 Supreme Court Cases 709, (2) Shyam Babu Verma Vs. Union of India reported in (1194) 2 SCC 521; 1994 SCC (L&S) 683; (1994) 27 ATC 121, (3) Union of India Vs. M.Bhaskar reported in (1996) 4 SCC 416; 1996 SCC (L&S) 967 and (4) V. Gangaram Vs Regional Joint Director reported in (1997) 6 SCC 139;



1997 SCC (L&S) 1652 apart from referring to the judgment of the Apex Court referred by the Learned Single Judge”.

3. In the light of the settled legal position, which is also undisputed by the learned counsel appearing for the respondent, this Court is of the considered view that the action of the respondent in recovering of amount of Rs.66,659/- from the petitioner by the impugned proceedings is contrary to the settled legal position as noted herein above. Further, the impugned recovery was also effected without following the principles of natural justice and without putting the petitioner on notice. In the light of the settled legal position and also for not following the principles of natural justice, the impugned proceedings dated 25.03.2011 and 02.01.2012 are unsustainable and are liable to be set aside.

4. Accordingly, the impugned proceedings are set aside and the respondent is directed to refund the amount recovered from the petitioner pursuant to the impugned proceedings as expeditiously as possible at any rate within a period of 2 weeks from the date of receipt of a copy of this order.



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5. Accordingly, this writ petition is allowed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
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To:

The Chier Engineer,
Water Resource Department, (PWD),
Chennai Region,
Chepauk, Chennai – 600 005.

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