



WEB COPY



W.P.No.19505 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.19505 of 2023

and

W.M.P.Nos. 18789 & 18790 of 2023

K.Shanmugam

... Petitioner

Versus

1.The State of Tamil Nadu

Rep by its Principal Secretary to Government

Handlooms, Handicrafts, Textiles and

Khadi Department

Fort St.George, Chennai – 600 009

2.The Tamil Nadu Khadi and Village Industries Board

Rep by its Chief Executive Officer

Kuralagam, Chennai – 600 108

3.The Assistant Director

Tamil Nadu Khadi & Village

Industries Board

Kancheepuram District

4.The Financial Adviser and

Chief Accounts Officer

Tamil Nadu Khadi & Village Board

Kuralagam, Chennai – 600 104

Respondents

...



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PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the 3rd respondent via his proceedings in Na.Ka.No.236/E/2017 and quash the impugned order dated 03.08.2022 received on 19.04.2023 as illegal and violative of the G.O.Ms.No.286 of 2018 dated 28.08.2018.

For Petitioner : M/s.Karthikaa Ashok

For Respondents : Mr.P.Baladhandayutham for R1
Special Government Pleader
Mr.S.K.Bose for R2 to R4

ORDER

This writ petition has been filed challenging the proceedings of the third respondent in Na.Ka.No.236/E/2017 dated 03.08.2022, quash the same as illegal and violative of the G.O.Ms.No.286 of 2018 dated 28.08.2018.

2. It is the case of the writ petitioner that he was appointed as a Soap Chemist in the Respondent Board on 01.07.1992. During, his service, he was given Selection Grade and got Special Grade on 09.07.2003 and retired on 31.05.2017 by attaining the age of superannuation. On the date of his retirement, he was served with an order dated 24.05.2017 deducting the alleged excess payment of Rs.1,71,156/- from the terminal benefits.



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Challenging, a writ petition was filed before this Court in W.P.No.14878 of 2017, wherein, this Court, by Order dated 18.02.2022, set aside the order dated 24.05.2017 and directed the respondents to issue a show cause notice with working sheet and thereafter, orders shall be passed. Subsequent to a contempt petition, he was paid with the terminal benefits after deducting the pay paid to the petitioner in selection grade pay as excess payment and the scale of pay is wrongly fixed in the post of Technician (Soap) vide Order dated 14.11.2022, directing the petitioner to pay the petitioner a sum of Rs.77,813/-. While so, the impugned order is passed directing to retain the sum of Rs.77,813 towards excess payment. Challenging the said retention, this writ petition has been filed before this Court.

3. Heard both sides and peruse the materials placed on record. The petitioner being the Soap Chemist is a Class 4 employee, this aspect is not disputed. The excess payment is said to have been made from the year 2013 till his service and continuously paid. Now, a sum of Rs.77,813 is said to be recovered.



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4. This Court is of the view that it is a well settled law by the Hon'ble Supreme Court in *State Of Punjab & Ors vs Rafiq Masih (White Washer) [(2015) 4 SCC 334]* that payments made mistakenly by the employer, in excess of employee's entitlement, recoveries by the employers are not impermissible in law in certain situations. The relevant portion of the Judgment is extracted hereunder:

“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.



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(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.”

The State Government in G.O.Ms.No.286, Finance (Pension) Department dated 28.08.2018 has also reiterated the same in paragraph No.3 of the Government Order.

5. Such view of the matter, when the petitioner being the Class IV employee and that the recovery is to said to effected from the petitioner, this Court is of the view since the payment has been made for more than 5 years, the order of recovery cannot be sustained in the eye of law.



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6. Such view of the matter, the recovery order alone passed by the respondents stands quashed. Accordingly, the Writ Petition stands disposed of. Consequently connected Writ Miscellaneous Petitions are closed. No costs.

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Index:Yes/No

Internet: Yes/No

Neutral Citation:Yes/No



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N.SATHISH KUMAR, J.

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