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W.P.No.24687 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.24687 of 2023 &

WMP.Nso.24128 & 24129 of 2023

S.Selvaraj

... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by is Principal Secretary to Government,
Department of Municipal Administration Water Supply,
Fort St. George, Chennai – 09.
 2. The Director of Town Panchayat,
Urban Administrative Buildings,
No.75, Santhome High Road, Raja Annamalaipuram,
Chennai – 600 028.
 3. The Director of Local Fund Audit,
Integrated Complex For Finance Department,
Veterinary Hospital Complex,
Nandanam, Chennai.
 4. The Executive Officer,
Anthiyur Selection Town Panchayat,
Anthiyur, Erode District.
- ... Respondents

Prayer:- Writ Petition filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records



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in pursuant to the first impugned Order issued by the fourth respondent in proceedings Na.Ka.No.219/223 dated 28.06.2023 and the subsequent second impugned Order issued by the fourth respondent in proceedings Na.Ka.No.219 of 2023 dated 19.07.2023 and to quash these orders and to consequently direct [i] the fourth respondent to issue 'No Objection Certificate to the petitioner for the purpose of processing petitioner's pension papers, [ii] to direct the third respondent to process the pension papers of the petitioner without insisting upon the recovery of the audit objected alleged excess paid pay of Rs.4,46,808/-.

For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.Azizullakhan
Government Advocate – R1 to R3

Mr.M.Alagu Gowtham,
Government Advocate – R4

ORDER

This Writ Petition has been filed to quash the impugned Order issued by the fourth respondent in proceedings dated 28.06.2023 and the subsequent second impugned Order issued by the fourth respondent dated 19.07.2023 and consequently direct the fourth respondent to issue 'No Objection Certificate to the petitioner for the purpose of processing



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petitioner's pension papers and to direct the third respondent to process the pension papers of the petitioner without insisting upon the recovery of the audit objected alleged excess pay of Rs.4,46,808/-.

2. The case of the petitioner is that the petitioner was initially appointed as an Electrician Grade II at Moolanur Town Panchayat on 15.05.1989 and he was awarded Selecton grade in the post of Electrician Grade II on 15.05.1999 and Special Grade on 15.05.2009. Pursuant to the implementation of the sixth pay commission recommendation, the Government of Tamilnadu notified Tamil Nadu revised pay scale Rules 2009 vide G.O.Ms.No.234 Finance [Pay Cell] Department dated 01.06.2009, wherein revised pay scale to the employees of the State Government were sanctioned notionally with effect from 01.01.2006 and with monetary benefit with effect from 01.01.2007. As per the above G.O., the pay of the petitioner was fixed in the pay band 9300-24800+Grade Pay 4200. Thereafter, he was continued to receive his pay. However, in the year 2017, the pay of the petitioner has been reduced. The same has been challenged in the Writ Petition in W.P.No.1488 of



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2018 and the said Writ Petition has been allowed with a direction to the fourth respondent to issue show cause notice to the petitioner within a period of four weeks and pass Orders on merits. Thereafter, the impugned Order has been passed. According to the petitioner, the impugned Order has been passed without application of mind and mainly on the basis of the audit objections and the same has to be set aside.

3. A perusal of the impugned Order, it is seen that the amount has been paid to the petitioner continuously for more than 5 years and the petitioner is an Officer of Group 'C' and he is 59 years and almost at the verge of his retirement, based on the audit objections, the impugned Order has been passed. In the judgment of the Apex Court in **State of Punjab Vs. Rafi Masih** reported in [2015] 4 SCC 334, has laid the following guidelines with regard to recovery from employees Group 'C' and Ground 'D' Service :

“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



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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 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



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be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

In the light of the above guidelines, as the amount paid to the petitioner for more than five years sought to be recovered at the verge of his retirement, the same cannot be sustained in the eye of law and the impugned Orders are liable to be quashed.

6. Accordingly, this Writ Petition is allowed. The impugned Orders passed by the fourth respondent dated 28.06..2023 and 19.07.2023 are quashed. Consequently, connected miscellaneous petitions are closed. No costs.

23.08.2023

Index: Yes/No

Neutral Citation : Yes/No

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N.SATHISH KUMAR, J.

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