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W.P.Nos.29277 of 2017 and
31860 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.02.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.29277 of 2017

&

W.P.No.31860 of 2018

W.P.No.29277 of 2017:

E.Chittaranjan

.. Petitioner

/versus/

1.The State of Tamil Nadu,
Rep.by its Secretary to the Government
and Agricultural Production Commissioner,
St.George Fort, Chennai-9.

2.The Commissioner of Agricultural Department,
Chepauk,Chennai-600 005.

3.The Commissioner of Horticulture,
Department of Horticulture,
Chepauk, Chennai 600 005.

4.The Deputy Director,
Department of Horticulture,
Pudukottai-622 001.

.. 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



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of the 1st respondent in the proceedings dated 05.07.2016 in அரசு கடித எண் 38168/வேந்/2007-57 and quash the same and direct the 1st respondent to refund Rs.1,39,584/- and pay interest @ 12% p.a to the petitioner's Death cum Retirement Gratuity of Rs.3,28,680/- from 31.05.2004.

For Petitioner :Mr.L.Chandrakumar

For Respondents :Mr.K.H.Ravikumar
Government Advocate
for R1 to R4

W.P.No.31860 of 2018:

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/versus/

1.The State of Tamil Nadu,
Rep.by its Secretary to the Government
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2.The Commissioner of Agricultural Department,
Chepauk,Chennai-600 005.

3.The Commissioner of Horticulture,
Department of Horticulture,
Chepauk, Chennai 600 005.

4.The Deputy Director,
Department of Horticulture,
Pudukottai-622 001.

5.The Accountant General (A&E) of TamilNadu,
Anna Salai, Chennai 600 018.

.. Respondents



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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 proceedings of the 5th respondent in No.Pr.AG(A&E)/PEN/Po7/10715860/1/R0715860, dated 25.11.2016 and quash the same in so far as the recover of Rs.1,39,584/- is concerned and to direct the 5th respondent to refund the sum of Rs.1,39,584/- and to pay interest for the belated payment of DCRG of Rs.3,28,608/- from 31.05.2004 at the rate of 12% p.a.

For Petitioner :Mr.L.Chandrakumar

For Respondents :Mr.K.H.Ravikumar
Government Advocate
for R1 to R4
Mr.V.Murali for R5

COMMON ORDER

When the petitioner was due to retire on 31.05.2004 from the service of the respondents-department, he was issued two charge memos dated 13.01.2002 and 11.10.2003 respectively. Challenging the said charge memos, he had filed a writ petition in W.P.(MD)No.5269 of 2007 before the Madurai Bench of Madras High Court and ultimately, in the order passed in W.A.(MD)No.59 of 2011, dated 25.06.2014, the Hon'ble Division Bench had quashed the charge memos and directed the



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respondents to settle the terminal benefits to the petitioner, within the stipulated time. Alleging non-compliance, a contempt petition in Contempt Petition (MD) No.216 of 2016 came to be filed. Pending the same, the suspension order dated 31.05.2004 was revoked and the Accountant General had sanctioned Death-cum-Retirement Gratuity (in short “DCRG”) of Rs.3,28,680/- to the petitioner.

2. However, the 4th respondent herein, by an order dated 20.10.2016, directed for recovery of Rs.1,39,584/- based on the audit objection. Consequently, the balance amount of Death-cum-Retirement Gratuity benefits, except Rs.1,39,584/-, was disbursed to the petitioner herein. The petitioner challenged the order of the first respondent dated 05.07.2016 in W.P.No. 29277 of 2017 and the fifth respondent herein passed a consequential order for recovery of Rs.1,39,584/-, in his proceedings dated 25.11.2016, which is challenged under W.P.No.31860 of 2018.

3. The learned counsel appearing for the petitioner predominately raised two grounds challenging both the orders of the first and fifth



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respondents. He submitted that the order of recovery has been made without any notice to the petitioner and hence, it is in violation of principles of natural justice. Secondly, he submitted that in view of the decision of the Hon'ble Supreme Court in *State of Punjab and others v. Rafiq Masih* reported in [(2015)4 SCC 334], recovery from the retired person based on the audit objection relating to certain infirmities in maintenance of the stock register in the year 2001, cannot be made.

4. Per contra, the learned Government Advocate appearing for respondents 1 to 4 as well as the learned counsel appearing for the 5th respondent placed reliance on the averments made in the counter affidavits and submitted that in view of the order passed by this Court, they have promptly disbursed the DCRG benefits. Likewise, they submitted that since there was an audit objection with regard to the portion of Death-cum-Retirement Gratuity, the respondents were constrained to deduct and recover the amount. Since they were following the directions of the Audit Department, there is no infirmity in the order of the recovery proceedings.

5. I have heard the submissions made by the learned counsel



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appearing for the petitioner and the learned Government Advocate appearing for respondents 1 to 4 and the learned counsel appearing for the 5th respondent and also carefully gone through the materials available on records.

6. The Hon'ble Supreme Court in *State of Punjab and others v. Rafiq Masih* reported in *[(2015)4 SCC 334]*, wherein it was held that after more than 5 years, the recovery of the retired person cannot be done. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.



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(iii) Recovery from the 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.

7. Moreover no notice was issued to the petitioner calling for his objection to recover or withhold the amount from his terminal benefits and it amounts to violation of principles of natural justice. On this ground also, the impugned order of recovery cannot be sustained. Since the DCRG have been illegally detained by the respondents herein, he would be entitled for interest at the rate of 10% p.a., under the Act.

8. In the light of the above observations, the impugned orders in

அரசு கடித எண்.38168/வேநி7/2007-57 dated 05.07.2016 and No.Pr.AG(A&E)/



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PEN/Po7/10715860/1/R0715860, dated 25.11.2016 are quashed.

Consequently, there shall be a direction to the first respondent to forthwith disburse the amount of Rs.1,39,584/- together with interest at the rate of 10% p.a, from 31.05.2004, within a period of four weeks from the date of receipt of a copy of this order. Accordingly, these writ petitions are allowed. No costs. Consequently,

01.02.2023

Index:yes/no
Speaking order/non speaking order
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To:

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- 2.The Commissioner of Agricultural Department,
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4.The Deputy Director,
Department of Horticulture,
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5.The Accountant General (A&E) of TamilNadu,
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M.S.RAMESH, J.

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