



W.P.(MD)No.4976 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4976 of 2020

and

W.M.P(MD) Nos.4353 & 11407 of 2020

C.Vijayalakshmi

: Petitioner

Vs.

The Joint Commissioner (ST)
Chennai South Division,
Chennai.

: Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the records pertaining to
the Na.Ka.No.3186/2018/Aa4 dated 27.01.2020 and quash the same as
illegal and unlawful.



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For Petitioner : Mr.J.Pooventhera Rajan

For Respondent : Mr.S.P.Maharajan
Special Government Pleader

ORDER

This writ petition has been filed to quash the impugned order passed by the respondent herein in Na.Ka.No.3186/2018/Aa4, dated 27.01.2020.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Khadi Assistant Grade III in the Tamil Nadu Khadi Board from 21.09.1995. Khadi Board incurred heavy loss and totally 378 staffs were considered as excess staffs and they were proposed to absorb in Government department. Hence, the Government of Tamil Nadu issued a Government Order in G.O.Ms.No.154 (Handloom, Handicrafts, Textiles and Khadi (F2) Department), dated 21.11.2009 framing guidelines for the absorption of the excess staffs in the Khadi Board to other Government departments. The petitioner was also one of the excess staff in



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3. The learned counsel for the petitioner further submitted that the petitioner is working as clause 4 employee of the respondent department and earlier rendered service in Khadi Board and thereby, awarded Selection Grade and Special Grade without any representation made by the petitioner on their own they are granted Selection Grade and Special Grade and they are sought to be recovered later point of time, which was challenged before this Court. Pursuant to the order passed by this Court the present impugned order is passed. However, the issue arises in the present case is no longer *res integra*.

4. To support the contention of the petitioner, he referred to the decision of the Hon'ble Supreme Court rendered in the case of State of Punjab and others Vs. Rafik Masih (White Washer) and others reported in 2015(4) SCC-334.

5. By referring the judgment of the Hon'ble Supreme Court of India, the petitioner submitted that no recovery proceedings can be initiated even for any excess payment given to the petitioner by the respondents.



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Hence, the Recovery proceedings, initiated by the respondents are liable to be quashed.

6. The learned Special Government pleader appearing for the respondents submitted that the Government in its letter, dated 19.12.2017 of Handloom, Handicrafts, Textiles and Khadi Department has stated that the employees found surplus in Khadi Board and reappointment will be treated as new entrance in absorbed department as per G.O.Ms.No.152, dated 12.07.2012. Further, the said letter also states that awarding of Selection Grade and Special Grade to the said employees is against G.O.Ms.No.154, dated 21.11.2009. Therefore, instructions has been issued in the Government letter, dated 19.12.2017 to cancel the Selection Grade and Special Grade awarded to such employees and to recover the excess pay after revising the pay, in pursuance of the said letter, a show cause notice, dated 06.09.2019 was issued. If the petitioner is aggrieved, he ought to have challenged Government letter, dated 19.12.2017 and not the consequential order and therefore, the writ petition is not maintainable either on facts or on law. Hence, prayed for dismissal of the writ petition.



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7. Heard the learned counsel on either side and perused the materials available on record.

8. The facts in the present case are not in dispute. Admittedly, the petitioner was appointed as Khadi Assistant Grade-III in Khadi Board and thereafter, the petitioner found as excess staff in Khadi Board, thereby totally she was absorbed in other Government department. While she was working in the respondent department, she was awarded with Selection Grade and Special Grade on completion of 10 years and 20 years service, respectively. That the incentive increment sought to be recovered subsequently, on the ground that the service rendered in the Khadi Board, is not eligible to get benefits in the respondent department, thereby, the present recovery order was passed. Though there is no violation of principles of natural justice, the present recovery order is passed after hearing the petitioner. However, the similar issue came up for consideration before the Hon'ble Apex Court, wherein, the Apex Court held that in the absence of any misrepresentation, if any benefits granted to the clause 3 and 4



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employees cannot be sought to be recovered subsequently, at a later point of time.

9. In the decision of the Hon'ble Supreme Court rendered in the case of State of Punjab and others Vs. Rafik Masih (White Washer) and others reported in 2015(4) SCC-334 and referred paragraph No.12, wherein, it was held 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:

- (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."

10. In view of the settled proposition of law laid down by the Hon'ble Apex Court, the Recovery proceedings, initiated by the respondents is not sustainable, and accordingly, the present impugned order is quashed.



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11. Accordingly, this writ petition is allowed. The present impugned order is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM

To

The Joint Commissioner (ST)
Chennai South Division,
Chennai.



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M.DHANDAPANI, J.

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