



W.P.(MD)No.9459 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.10.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD)No.9459 of 2020
and W.M.P.(MD) Nos.8561 and 8562 of 2020

A.Subbiah

...Petitioner

-Vs.-

1.The Principal District Judge,
Virudhunagar District,
at Srivilliputhur.

2.The Chief Judicial Magistrate,
Srivilliputhur,
Virudhunagar District.

...Respondents

PRAYER:- Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records dated 04.03.2020 pertaining to the impugned order of recovery and re-fixation on the file of the 2nd respondent, quash the same, as the same is arbitrary, ultravires, contrary to the principles of natural justice, audi alteram partem and G.O.Ms.No.286 (Finance Pension Department) dated 28.08.2018.

For Petitioner : Mr.R.G.Sankar Ganesh



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For Respondents : Mr.G.Thalaimutharasu
Standing Counsel

ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The order of recovery dated 04.03.2020, issued by the second respondent, is sought to be quashed in the present Writ Petition.

2. The writ petitioner was holding the post Sheristadar at Chief Judicial Magistrate's Court, Virudhunagar District at Srivilliputhur. The petitioner was allowed to retire from service on 31.05.2020 on attaining the age of superannuation. The order impugned dated 04.03.2020, was issued during the eve of his retirement on the ground that fixation of one increment on 01.07.1998 in the post of Junior Assistant was granted inadvertently and therefore, the said excess pay was sought to be recovered. The said error occurred was continued subsequently in respect of the further increments granted and the total financial loss caused to the State was calculated at Rs.10,56,334/-.



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3. Learned counsel for the petitioner made a submission that the petitioner has not given any undertaking at the time of re-fixation of pay or grant of increment nor there was mis-representation on the part of the petitioner while granting the re-fixation. In the absence of any such grounds, the authorities cannot impose recovery after a lapse of long years from the date of sanctioning of increment in favour of the writ petitioner.

4. In the present case, the petitioner cannot be held responsible for re-fixation of pay and for the mistake committed by the establishment the petitioner cannot be penalized or made to suffer. That apart, no show cause notice was issued to the writ petitioner before issuing the impugned order. Any order affecting the service rights of an employee is to be passed only after affording opportunity to the employee. Thus, the order impugned is in violation of the principles of natural justice. The petitioner has already attained the age of superannuation and retired from service. For all these reasons, we are inclined to consider the Writ Petition.



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5. Accordingly, the order impugned passed by the second respondent dated 04.03.2020 is quashed and the Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

[S.M.S.J.] & [V.L.N.J.]
19.10.2023

NCC :Yes/No
Index :Yes/No

SJ

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Virudhunagar District.



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S.M.SUBRAMANIAM, J.
AND
V. LAKSHMINARAYANAN, J.

SJ

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