



W.P.(MD).No.16405 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.07.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.16405 of 2023

Maria Sahaya Berneth Diaz

... Petitioner

Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-600 004.

2.The Commissioner of Police,
Tirunelveli City,
A.R.Line Road,
Palayamkottai,
Tirunelveli.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to refund/reimburse the recovery amount a sum of Rs.1,44,980/- (Rupees One Lakh Forty Four Thousand Nine Hundred and Eighty only) to the Petitioner's account, by considering the petitioner's representation dated 05.06.2023, within the time frame that may be fixed by this Honourable Court.

For Petitioner : Mr.A.Rajaram



W.P.(MD).No.16405 of 2023

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For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

The present writ petition has been filed seeking direction to the respondents to refund/reimburse the recovery amount a sum of Rs.1,44,980/- (Rupees One Lakh Forty Four Thousand Nine Hundred and Eighty only) to the Petitioner's account, by considering the petitioner's representation dated 05.06.2023, within the time frame that may be fixed by this Honourable Court.

2. Heard Mr.A.Rajaram, learned counsel for the petitioner and Mr.M.Prakash, learned Additional Government Pleader for the respondents.

3. The petitioner retired as Special Sub Inspector of Police. Initially, he was appointed as Grade-II Police Constable in the Police Department on 25.09.1988. Thereafter, he got voluntary retirement as Special Sub Inspector of Police on 31.10.2021 in Tirunelveli City Traffic control. The petitioner had completed 34 years of service in the Police Department. After the retirement of the petitioner, the 2nd respondent had issued proceedings, dated 22.03.2022 stating that, as per the Accountant General Auditing Report, his basic salary has



W.P.(MD).No.16405 of 2023

been modified from Rs.57,400/- to 55,700/-. The total recovery amount is a sum of Rs.1,44,980/- and the reduction period was from 01.06.2013 to 31.10.2021. Under such circumstances, the said amount was ordered to be recovered from the petitioner's pensionary benefits, namely DCRG and to be remitted to the Government under the relevant head of account by the Treasury Officer, Huzur Treasury, Tirunelveli District. However, left with no other option, since the petitioner was not given with the terminal benefits, the petitioner paid the entire amount from his own money to the Treasury Office.

4. Thereafter, the respondents concerned permitted to release the petitioner's terminal benefits including DCRG amount and pension from 01.04.2022. Such an exercise by the 2nd respondent is a sheer violation of the principles of natural justice and hence, the respondents concerned straight away issued the recovery order without giving any opportunity to the petitioner as per the order of the Accountant General Auditing Report and the recovery order was passed against the petitioner without hearing him that too after retirement. Hence, the petitioner made a representation to the respondents on 05.06.2023 for refund/reimbursement of the recovered amount of Rs.1,44,980/- as the said



W.P.(MD).No.16405 of 2023

recovery of amount of Rs.1,44,980/- is illegal. However, his representation was not considered. Hence, this writ petition came to be filed.

5. Per contra, the learned Additional Government Pleader submitted that the petitioner on being communicated by the proceedings of the 2nd respondent, dated 22.03.2022 as to the refixation of his salary, exclusively on his own volition paid the entire amount, which was ordered to be recovered from him. The learned Additional Government Pleader reiterated, having paid the said amount now cannot seek reimbursement and pressed for dismissing the writ petition.

6. This Court is of the considered opinion that in a catena of decisions, various Courts have consistently held that if excess amount was paid to the employee on account of any misrepresentation or fraud of the employee and if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowances or on the basis of a particular interpretation of Rule or Order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. Even in this case,



W.P.(MD).No.16405 of 2023

after the retirement of the petitioner, such an exercise has been done by the respondent by identifying that the petitioner's salary had been wrongly calculated during the period 01.06.2013 and 31.10.2021 and he was forced to pay the said amount by passing a recovery order by subjecting him to a threat that his terminal benefits will not be released. On Such compulsion, the petitioner made that payment. In furtherance to the same, the petitioner made a representation on 05.06.2023.

7. It is needless to point out that whenever a representation of this nature is made to a Statutory Authority, there is a duty cast upon the respondent to consider the same on its own merits and pass appropriate orders in one way or other instead of keeping the same pending indefinitely. As such, non-consideration of the representation made by the Statutory Authority would amount to dereliction of duty and hence, this Court will be justified in invoking the extraordinary powers under Article 226 of the Constitution of India.

8. In view of the same, without going into the merits of the case, this Court is inclined to direct the respondents to consider the petitioner's representation, dated 05.06.2023 within a period of twelve (12) weeks from the



W.P.(MD).No.16405 of 2023

date of receipt of a copy of this order in the light of the order passed by the Hon'ble Supreme Court of India reported in ***(2015) 4 SCC 334 State of Punjab and Haryana Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334.***

9. In view of the above said observations, this Writ Petition stands disposed of. No costs.

07.07.2023

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

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W.P.(MD).No.16405 of 2023

L.VICTORIA GOWRI, J.

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W.P.(MD).No.16405 of 2023

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