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W.P.No.20697 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE MUMMINENI SUDHEER KUMAR

W.P No.20697 of 2012

and

MP.Nos.1 & 2 of 2012

M.Kannaiyan

...

Petitioner

Vs.

The Assistant Director of Sericulture,
Pennagaram,
Dharmapuri District,
Dharmapuri.

...

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.No.3824/A/11-14 dated 22.06.2012 issued by the respondent and quash the same and consequently direct the respondent to make the payment of Employment Provident Fund to the petitioner eligible to him along with interest within the time frame to be fixed by this Court.

For Petitioner : Ms.M.Kaviya for Mr.S.Nedunchezhiyan

For Respondent : Mr.R.Vigneshwaran,
Government Advocate

ORDER



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The petitioner herein worked as casual labour in the respondent's Sericulture Department from 01.04.2004 to 22.02.2010 and thereafter, he was extended to the benefit of regular time scale of pay of Rs.2500-5000+GP 500/- with effect from 23.02.2010 by virtue of order issued in G.O.(Rt) No.25, Handlooms, Handicrafts, Textiles & Khadi Department, dated 23.02.2010. In view of the same, the EPF account of the petitioner was closed and the Director of Pension was asked to pay the final withdrawal amount of EPF due to the petitioner and other labourers who were brought into regular time scale by the respondents.

2. It is thereafter when the petitioner made claim for final payment of EPF amount, the impugned proceedings in letter No.3824/A/11, dated 22.06.2012 came to be issued to withhold the EPF amount payable to the petitioner on the ground that the petitioner was paid with an excess Dearness Allowance during the period from 01.04.2004 and 22.02.2010 to the tune of Rs.1,22,308/- and required the petitioner to remit the said amount so as to release the EPF amount due and payable to the Petitioner. It is aggrieved by the said proceeding dated 22.06.2012, the petitioner is before this Court.



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3. From the above, it is evident that the alleged excess amount of Dearness Allowance that was paid to the petitioner was during the period from 01.04.2004 to 22.01.2010 is sought to be recovered from the petitioner by the respondent by issuing the impugned proceedings. The so called excess amount paid to the petitioner was during the period, the petitioner was working as a casual labour. The validity of any recovery or authority of any department to recover the excess amount and the scope of such recoveries has fallen for consideration before the Hon'ble Apex Court in the case of ***State of Punjab and Ors. etc Vs. Rafiq Masih (White Washer) etc***, reported in ***AIR 2015 SCC 696***, wherein the Hon'ble Apex Court held as under:

"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.

(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."

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In the light of Clause (i) of paragraph 12 above, the recovery from employee belonging to Clause -III and IV service is held to be impermissible in law by the Hon'ble Apex Court.

4. As already noted above, the petitioner herein while working as casual labourer, the so called excess payment was made towards DA to the petitioner and the same is sought to be recovered in the year 2012 by passing the impugned order. In the light of the law laid down by the Hon'ble Apex Court as noted above, any attempt on the part of the respondent seeking to recover the said amount of Rs.1,22,308/- from the petitioner through a impugned proceeding is totally contrary to the law laid down by the Hon'ble Apex Court.

5. Furthermore, the impugned proceeding dated 22.06.2012 came to be issued by the respondent without following the principles of natural justice and no opportunity was afforded to the petitioner before issuing the impugned proceeding. For this reason also, the impugned proceeding is liable to be set aside.

6. In the light of the above, the impugned order requiring the petitioner to pay the amount of Rs.1,22,308/- and withholding the EPF amount of



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Rs.1,16,204/- payable to the petitioner is liable to be declared as illegal, arbitrary and contrary to law. Accordingly the impugned order is set aside declaring that the petitioner is entitled to receive the EPF final payment amount of Rs.1,16,204/- with accrued interest thereon, if any.

6. In the result, the Writ Petition is **allowed** and the respondent is directed to take steps for releasing the EPF amount payable to the petitioner as expeditiously as possible, preferably within a period of six weeks from the date of receipt of copy of this order. There shall be no order as to costs. consequently, connected miscellaneous petitions are also closed.

21.08.2024

Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs



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MUMMINENI SUDHEER KUMAR.J.,

jrs

To

The Assistant Director of Sericulture,
Pennagaram,
Dharmapuri District,
Dharmapuri.

W.P No.20697 of 2012
and
MP.No.1/2012

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