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W.P. No.3927 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.3927 of 2021

and

W.M.P.Nos.4480 & 4481 of 2021

1.S.Ragothaman

2.R.Bagavathi

3.S.Subbaiah

4.S.Venkatachalam

5.M.Balakrishnan

... Petitioners

Vs.

1.The Government of Tamil Nadu
Represented by its Secretary,
Finance (Pay Cell) Department,
Fort St. George,
Chennai – 600 009.

2.The Government of Tamil Nadu
Represented by its Secretary,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai – 600 009.

3.The Director,

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Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet, Chennai – 600 015.

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4.The District Collector,
Tiruppur District.

5.The District Collector,
Coimbatore.

6.The Sub Treasury Officer,
Udumalpet, Tiruppur District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 6th respondent in his proceeding Na.Ka.No.1377/2021/A2 dated 05.01.2021 where by recovery has been ordered to the petitioners and quash the same and consequently direct the respondents herein to refund the recovered amount to the petitioners.

For Petitioners : M/s.K.Raja

For Respondents : Mr.M.Murali,
Government Advocate.

ORDER

This petition has been filed challenging the proceeding bearing Na.Ka.No.1377/2021/A2 dated 05.01.2021 whereby the 6th respondent ordered for recovering certain amount from the petitioners who are stated to have been paid in excess of the entitlement of the petitioner.



2. The petitioners 1 to 5 herein, who served as Block Development Officer retired from service on 31.10.2002, 31.01.2000, 30.04.2004, 30.06.2000 and 31.07.2000 respectively on attaining the age of superannuation. The impugned recovery is assailed on various grounds including the one that, the said recovery is impermissible under law, in the light of law laid down by the Hon'ble Apex Court in the case of ***State of Punjab & Others Vs. Rafiq Masih (White Washer) etc*** reported in ***CDJ 2014 SC 1054***.

3. The respondents have filed counter affidavit admitting the fact of retirement of the petitioners on attaining the age of superannuation as stated in the affidavit filed in support of this writ petition.

4. However, it is contented that when certain amounts were sought to be recovered from the petitioners, the petitioners have submitted a letter dated 14.05.2021 requesting for postponement of recovery till the entire litigation is finalised and it is only pursuant to the order passed by the Hon'ble Apex Court dealing with fixation of pay, the impugned recovery is sought to



be effected from the petitioners. No doubt, the Hon'ble Apex Court, while dealing with the revision of pay scales, appointed Justice Mr. Murugesan committee to resolve the disputes pertaining to revision of pay scales and which is pursuant there to the pay scales have appropriately been revised. May be pursuant to such revision of pay scales, the pay of the petitioners also appears to have been revised resulting in ordering for recovery of the amounts under the impugned order.

5. Even assuming that the petitioners have submitted a letter dated 14.05.2021 requesting for postponing recovery till the entire litigation is finalised, that would not amount to accepting for recovery or the right to object for such recovery will not get obliterated by such letter. The only question that would arise for consideration in this writ petition is whether the respondents are empowered in ordering any recovery of the amount pursuant to the impugned order.

6. The Hon'ble Apex Court, while dealing with same situation, laid down certain principles or guidelines under which the recoveries cannot be



affected. The relevant paragraph in the case of ***State of Punjab & Others***

Vs. Rafiq Masih (White Washer) etc reads 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 employees, 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 conclusions, 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. The case of the petitioners, who retired from service during the years 2000 to 2004 would definitely fall under Class (ii) of Paragraph 12 of the above decision and therefore, in the light of the law laid down by the Hon'ble Apex Court, recovery that is sought to be effected from the petitioners is totally impermissible in law.

8. In the light of the mandate of the Hon'ble Apex Court in the above said decision, the impugned proceedings ordering for recovery of certain amounts paid to the petitioners during the year 22.07.2013 to 13.06.2019, after the petitioners retired from service cannot be sustained under law and the same is accordingly set aside only to the extent of recovery of the amounts. However, this order will not come in way of the respondents in re-fixing the pay of the petitioner, if not already re-fixed, in terms of the order passed by the Hon'ble Apex Court.

9. Accordingly, the writ petition is allowed to the extent indicated



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above and the connected miscellaneous petitions, if any, shall stand closed.

No costs.

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Index : Yes/No
Speaking Order : Yes/No
dpa

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