IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

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THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

W.P.No.4122 of 2020
and
W.M.P.No.4878 of 2020

A.Elavarasi ... Petitioner

Vs.

1.The Principal Secretary/Commissioner of Treasuries
and Accounts Department,
Treasuries and Accounts Integrated Complex,
For Finance Department, 3rd Floor,
Veterinary Hospital Campus,
Nandanam,
Chennai – 600 035.

2.The Treasury Officer,
District Treasury,
Collector Office Mater Plan Complex,
Villupuram – 605 602. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to impugned order passed by the 2nd respondent in his Proceeding Se.Mu.Na.Ka.No.12260/2018/Aal dated 20.06.2019 and quash the same and direct the respondents to refund the deducted amount (i.e) Rs.2,70,212/- with interest to the petitioner.

For Petitioner	: Mr.A.Parameswaran
For Respondents	: Mr.A.M.Ayyadurai Government Advocate

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ORDER

The instant Writ Petition is filed against the recovery order dated 20.06.2019 by and which, the respondents proposed to recover a sum of Rs.2,70,212/- being the excess pensionary amount paid to the petitioner beyond her entitlement.

2. The learned counsel for the petitioner would submit that there was no excess payment and whatever the payment received by the petitioner is according to her entitlement.

3. Per contra, the learned Government Advocate for the respondents

would strongly object the present Writ Petition on the ground that the impugned order is only a notice, and after receiving an explanation from the petitioner, a final order would be passed. Therefore, prays for dismissal of the present Writ Petition.

4. I have given my anxious consideration on the submissions made by either side.

5. The substance of the present Writ Petition is that whether the recovery order dated 20.06.2019 is valid in law. Though the learned Government Advocate for the respondents would submit that impugned order is only a notice, and that they would pass final orders only after receiving the explanation from the petitioner, while harmoniously reading the impugned order, it clearly manifest that the Government had already taken a decision to recover a sum of Rs.2,70,212/- from the gratuity amount. First of all, whether the Government is entitled to recover the amount from the gratuity is a moot question as there is a case of recovery of excess pay. It is apparent that Section 4(6)(1)(a) & Section 13 of Gratuity Act are in favour of the petitioner.

6. Apart from that, the petitioner having been already retired and when there are no proof that the excess payment have been made on the mis-representation of the petitioner, issuing such recovery notice after belated period would definitely iniquitous and harsh to the petitioner.

7. Apart from that, it could only be termed as an arbitrary exercise of power. In this regard, it is relevant to refer the judgement of the Hon'ble Supreme Court in the case of ***State of Punjab and Others etc.,*** Vs. ***Rafiq Masih (White Washer) Etc,.*** wherein, the Hon'ble Supreme Court had categorically held that, when there is no material, for furnishing any incorrect information, mis-representation, fraud, and if the excess payment was made only upon the mistake of the Department, then it becomes arbitrary on the part of the employer to order for recovery at a belated period. The present case squarely comes within the ratio of the above judgement. Therefore, this Court finds force in the submission of the petitioner for questioning the recovery order. However, since the fitment of pay involves special training and involves some expertise, this Court do not want to interfere with the re-

fixation of pay, and interfering only against recovery.

8. In the result, this Writ Petition is allowed only to the extent of recovery. With the above observations, this Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

17.10.2024

Index : Yes/No
Speaking order /Non Speaking Order
Neutral Citation : Yes/No
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To

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C.KUMARAPPAN, J.

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