



W.P.No.4551/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.4551 of 2020

K.Selvaraju

... Petitioner

/vs/

1. The District Adi-Dravidar and
Tribal Welfare Officer,
Collectorate, Cuddalore District.
 2. The Special Tahsildar (Adi Dravidar Welfare),
Vridhachalam,
Cuddalore District.
 3. The Head Master,
Government Adi-Dravidar Welfare Middle School,
Sirumangalam,
Thittagudi Taluk,
Cuddalore District.
 4. The Accountant General (A & E),
Teynampet, Chennai – 18.
- ... Respondents

Writ Petitions are filed under Article 226 of the Constitution of India
to issue a writ of certiorarified mandamus to call for the records on the file



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of the Recovery Order in his Pro.Na.Ka.அ/ 31 / 2017 dated .05.2017 of the third respondent and quash the same and consequently to direct the third respondent to refund the recovered D.C.R.G. Amount of Rs.1,66,589/-.

For Petitioner ... No appearance

For Respondents ... Mr.S.Arumugam
Government Advocate for R1 to R4

ORDER

There is no representation for the petitioner. Heard Mr.S.Arumugam, the learned Government Advocate for the respondents.

2. This writ petition has been filed challenging the recovery order of the third respondent in Pro.Na.Ka.அ/ 31 / 2017 dated .05.2017 and consequently to direct the third respondent to refund the recovered D.C.R.G. Amount of Rs.1,66,589/-

3. The petitioner worked as B.T.Assistant(Warden) at Government High School (Adi-Dravidar Welfare), Vadagaram Poondi and retired on



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superannuation on 31.01.2017. The petitioner suffered an order to cancel the incentive increment granted to him and the third respondent passed recovery order dated .05.2017 to recover of a sum of Rs.1,66,589/-. The said amount has been recovered from DCRG payable to the petitioner. Since the same has been done subsequent to his retirement, the petitioner sent a representation dated 22.08.2019. However, the same was not considered till date.

4. Mr.S.Arumugam, the learned Government Advocate, submitted that the amount has been recovered as it was found as an excess payment made to the petitioner; however the said recovery has been made only subsequent to the retirement of the petitioner.

5. No recovery can be made against the petitioner in view of the bar contemplated under the categories given in the Judgment of the Hon'ble Supreme Court in *State of Punjab Vs. Rafiq Mashhi (White Washer) and others reported in (2015) 4 SCC 334*. The relevant paragraph of the said judgment is extracted hereunder:



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“18. It is not possible to postulate all situation 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 the employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”

6. The petitioner's case would fall under Clause (ii) of the above category in view of the fact that recovery has been ordered subsequent to the retirement of the petitioner which is not permissible. Hence, I feel the respondents should be directed to pass orders to refund the recovery made



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from the terminal benefits of the petitioner's husband.

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7. Accordingly, this Writ Petition is allowed and the impugned order in Pro.Na.Ka.அ/ 31 / 2017 dated .05.2017 passed by the third respondent is hereby quashed and the third respondent is directed to refund the recovered D.C.R.G. amount of Rs.1,66,589/- within a period of four weeks from the date of receipt of a copy of the order. No costs.

26.02.2024

Index: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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R.N.MANJULA ,J.

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To:

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