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W.A.Nos. 2571 of 2024 & etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2024

Delivered on : 05.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE P.B. BALAJI

W.A.Nos. 2571, 2504, 2509, 2513, 2515, 2518, 2520,
2521, 2525, 2526, 2528 to 2535, 2551, 2553, 2556,
2559, 2561, 2564, 2567 to 2569 of 2024

and

CMP.Nos. 18446, 18451, 18452, 18454, 17913, 18093
, 18092, 18108, 17952, 18003, 18004, 18079, 18084, 18112,
18312, 18323, 18438, 18436, 18085, 17923, 18088, 18089,
17939, 17941, 17947, 18013, 18041, 18067, 18015, 18031,
18068, 18069, 18072, 18464, 18105, 17928, 18369, 18371,
18444, 18456, 17933, 18078, 18100, 18101, 18104, 18107,
18110, 18314, 18322, 18329, 18331, 18358, 18360 of 2024

W.A.No. 2515 of 2024

The Commissioner Panchayat Union
Mulanur Panchayat, Mulanur,
Dharapuram Taluk,
Tiruppur District.

..Appellant in
all writ appeals

Vs

1.S.Ravichandran



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2.The Principal Secretary to Government,
Social Welfare and Nutritious Meal Programme Department,
Secretariat, Fort St.George,
Chennai-600009.

3.The District Collector,
Tiruppur District,
Collectorate Tiruppur.

4.The Assistant Director,
Local Fund Audit,
Kumaran Complex,
2nd Floor, Kumaran Road,
Tiruppur – 641601

..Respondents
in all writ appeals

Prayer in W.P.No. 2515 of 2024: Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the common order passed by the writ court in W.P.Nos. 26870 of 2023 & etc., batch dated 29-09-2023.

For Appellants - Mr. R.Ramanlaal, AAG
(in all WAs) Assisted by Mr.T.Arunkumar, AGP

For Respondents - Mr.K.Vasanthanayagan – R1
(in all WAs) Mr.S.Yashwanth, AGP – R2 & R3

COMMON JUDGMENT

Challenging the common order passed by the writ court by quashing the recovery order passed by the appellant, these writ appeals are filed.



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Brief facts:

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2. The 1st respondent in all these writ appeals are the employees are working as Noon Meal Organisers in different schools in the same block. The Government of Tamil Nadu had issued a G.O.Ms.No. 38 Social Welfare and Nutritious Meal Programme dated 30.04.2015 for sanctioning the special increment i.e an stagnation increment who have completed 10 years/20 years/30 years of service. Based on the said Government Order, the appellant herein had sanctioned the financial benefits to all the employees who are working in the same block. Thereafter, on 15.05.2023 the appellant herein had passed recovery order stating reason that they are not eligible for regular increment and even before completion of stipulated service years, they received the monetary benefit. Challenging the said recovery order, the employees have filed writ petitions and the writ court by common order, had set aside the recovery order passed by the appellant herein. Aggrieved by the said common order, these writ appeals are filed.

3. The learned Additional Government Pleader appearing for the appellant has submitted that the 1st respondent/writ petitioners were neither



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Class D service nor regular Government servants and they are working only under the Puratchi Thalaivar M.G.R Nutritious Scheme. Since the writ petitioners did not reach final stage of pay scale, they should not have been given stagnation pay, which is payable only after completion of two years after completion of 30 years of service, as per G.O.38, Social Welfare Department, dated 30.04.2015.

4. The learned Additional Government Pleader for the appellant has further submitted that based on the undertaking Bond executed by the writ petitioners/1st respondent in all these appeals to refund the money in the event of any excess payment made to them, they were granted benefits by the appellant. Therefore, the recovery order dated 15.05.2023 is valid in law. The writ court without considering the aspects, by relying upon the decision of the Hon'ble Supreme Court in **Rafiq Masih case**, had set aside the recover order passed by the appellant. Therefore, the common order passed by the writ court is liable to be set aside.

5. On the other hand, the learned counsel appearing for the 1st respondents/writ petitioner in these appeals has submitted that the



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Government has passed the G.O.38, Social Welfare Department, dated 30.04.2015 to give stagnation increment to the noon meal organisers who have no promotional avenue. Pursuant to the above Government Order, the appellant herein had sanctioned increments to the 1st respondents/writ petitioners in all these appeals. Subsequently, passed recovery order on 15.05.2023 based on the audit report for 4 years from 2017-2018 and 2020 to 2021. The writ Court by rightly relying upon the decision of the Hon'ble Supreme Court in **Rafiq Masih case**, set aside the recovery order passed by the appellant. Therefore, the order of the writ Court is perfectly valid and does not require any interference by this Court.

6. Heard Mr.R.Ramanlal, learned Additional Advocate General assisted by Mr. T.Arun Kumar, learned Additional Government Pleader appearing for the appellant and Mr.K.Vasanthanayagan, learned counsel appearing for the 1st respondent and Mr.S.Yashwanth, learned Additional Government Pleader appearing for the respondents 2 & 3 and perused the materials available on record.



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WEB COPY 7. Upon hearing the submissions made by the learned counsels appearing for the parties concerned, the only point that needs to be addressed in these appeals is whether the recovery order passed by the appellant is valid in law. If so, does the order of the writ court require interference by this Court?

8. The Hon'ble Supreme Court and this Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered.

9. In the case on hand, the appellant herein pursuant to the Government Order in G.O.38, Social Welfare Department, dated 30.04.2015, had



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sanctioned increments to the 1st respondents/writ petitioners in all these appeals and subsequently, after a period of five years, had passed the recovery order on 15.05.2023, citing the audit report for 4 years from 2017-2018 and 2020 to 2021.

10. It is settled law by the Hon'ble Supreme Court in the case of ***State of Punjab and others -Vs- Rafiq Masih (White Washer) reported in (2015) 4 SCC 334***, which provided protection primarily for Class III and IV (Group C & D) employees, prohibiting recovery of over payments in cases where such recovery would result in undue hardship, especially when the excess payment has been made for a period in excess of five years and the employee is on the verge of retirement. In the Rafiq Masih case cited supra, the Hon'ble Supreme Court outlined several specific instances where recovery would be impermissible by the employer. The relevant portion is extracted hereunder;

i.Recovery from the employees belonging to Class III to 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, whether 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."

11. The appellant contends that the 1st respondent/writ petitioner in all these appeals do not fall under the Group D category as defined in the Rafiq Masih's case and have given an undertaking to refund the excess amount, if any received. However, the appellant has not produced any documents to substantiate this argument. The Hon'ble Supreme Court's reasoning in Rafiq Masih case extends beyond the strict classification of employees. The overarching principle in Rafiq Masih's case is to protect employees from financial distress due to recoveries when there is no fault or



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misrepresentation on their part.

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12. The writ court, in the impugned order, has rightly applied the principles laid down in *Rafiq Masih's* case and observed that the writ petitioners/1st respondents herein come under Group D categories and therefore, the recovery order dated 15.05.2023 in Na.Ka.No. 1159/2023/A6, issued by the appellant, is unjust and contrary to the principles laid down by the Supreme Court. As such, we are of the view that the impugned order passed by the writ court is consistent with the law, and the grounds raised by the appellant do not provide sufficient reason to interfere with the order of the writ court.

13. In fine, these writ appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(D.K.K., J.) (P.B.B., J.)

05.11.2024

Internet: Yes

Index : Yes

Speaking Order/Non Speaking order
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D. KRISHNAKUMAR, J.

and

P.B. BALAJI, J.

ak

Pre-delivery Judgement

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