



W.P.No.30297 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: **30.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.30297 of 2013

B.Karpagam

....Petitioner

Vs

1. State of Tamil Nadu,
Rep. By the Secretary to Government,
Sericulture Department,
Fort St.George, Chennai -09.
2. Director of Sericulture,
Sericulture Department,
Salem -1.
3. The Assistant Director of Sericulture,
Sericulture Departmentm
Vaniyambadi, Vellore.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus calling for the record relating to the order Na.Ka.No.612/2/2010 dated 07.05.2013 of the 3rd respondent and quash the same.

For Petitioner : Mr.C.K.Chandrasekaran
For Respondents : Mr.K.Tippu Sultan
Government Advocate



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ORDER

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This Writ Petition is filed challenging the order in Na.Ka.No.612/2/2010 dated 07.05.2013 passed by the 3rd respondent and for the consequential direction to direct the respondents to grant the petitioner all the monetary benefits.

2. It is the case of the petitioner that she had joined the respondent Department on 20.04.1979 as daily wager and after serving for thirty years, she got superannuated on 20.04.2009 and two years after her retirement, an amount of Rs.1,04,443/- was issued towards the EPF. When the petitioner went to collect the cheque from the office of the respondent, she was informed that, during October 2011, the 2nd respondent had intimated that a sum of Rs.28,430/- has been allegedly paid in excess when the wages was paid to her during the service and therefore the respondents retained the cheque insisting her that only if the sum of Rs.28,430/- which was excessively paid to the petitioner is repaid, the cheque issued towards the EPF will be released. Even this, only when the petitioner approached the respondent by filing the application under Right to Information Act, the 3rd



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respondent has issued the impugned order dated 07.05.2013 thereby intimating the petitioner to remit the amount of Rs.28,430/- and thereafter to receive the cheque towards EPF for an amount of Rs.1,04,443/-. Assailing the impugned order in the Writ Petition, petitioner has preferred the present Writ Petition.

3. The respondents, in para (5) of the counter stated that, during the year 2011, it was found by the Department that Dearness Allowances had been paid to the casual labourers for the period from 01.04.2004 to 22.02.2010 over and above the wages fixed by the Commissioner of Labour Department, Chennai. The Table indicating the excess payment has been made and as per the table, the excess payment paid to the petitioner was arrived at Rs.28,438/-. As the 2nd respondent has instructed to recover the excess DA paid to the labourers by its proceedings dated 30.01.2012, a consequential order has been passed by the 3rd respondent to recover this amount from the petitioner. As the petitioner has expressed her inability to pay the amount paid in excess and meanwhile as the final withdrawal amount under the Tamil Nadu Government Employees Provident Fund of Rs.1,04,442/- payable to the petitioner was received from the Director of



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pensions vide letter No. 8833/G3/2010 dated 23.09.2011, only to safeguard the payments made by the Department, the impugned order came to be passed. However, pursuant to the impugned order passed by this Court on 08.11.2013 directing the respondents to retain a sum of Rs.28,430/- and to pay the balance as an interim measure subject to the final decision in the Writ Petition, the E.P.F. Amount of Rs.76,004/- has been settled to the petitioner on 23.01.2014 and retained a sum of Rs.28,438 /-.

4. Mr.K.Tippu Sultan, learned Government Advocate appearing for the respondents contended that admittedly, only later it came to know that excessive payment has been made to the petitioner and also to several other employees, pursuant to the proceedings issued by the 2nd respondent, only to safeguard the interest of the Department for recovering excessive payment made, the impugned order came to be issued. He further contended that, as the petitioner has no means to make the payments, the EPF amount that was received from the Pension Department, was retained and the petitioner was intimated that the same will be released after repaying the excess amount received. He further contended that, however pursuant to subsequent interim directions, the balance amount retained by



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the respondent was released to the petitioner which is in order and thus sought for dismissal of this petition.

5. Heard the rival submissions and perused the materials available on record.

6. Admittedly, the petitioner had been appointed in the respondent Department on 20.04.1979 as daily wager and after serving for thirty years, he got superannuated on 20.04.2009 as daily wager itself and two years after her retirement in the year 2011, it is the stand of the Department that they noticed that, some excess payments have been made to employees from the period from 01.04.2004 to 22.10.2010 in respect of the Dearness Allowance over and above the wages as fixed by the Commissioner of Labour Department. From the averments made in the counter affidavit, it could be seen that, it was on no fault of the petitioner or any other employees, but the respondent Department on their own had wrongly calculated and made payments excessively to the employees and in such process, a sum of Rs.28,430/- has been excessively paid to the petitioner while she was in service which is without any fault on her part or any



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misrepresentations.

WEB COPY 7. The respondents on their own calculations made the payments during the service of the petitioner and after the petitioner has attained superannuation that too after a period of two years contending that they later came to know that the excessive payments have been made to the petitioner and the same is sought to be recovered. For the recovery of this amount when admittedly a cheque towards the Tamil Nadu Government Employment Provident Fund was received payable to the petitioner from the Director of Pensions dated 23.09.2011, the impugned order of the respondent holding that this amount could be released only if the excess payment made to the petitioner is repaid cannot be sustained.

8. The petitioner had worked as a daily wager which is under Group D category and as per the decision of the **Hon'ble Supreme Court of India in State of Punjab & Ors Vs. Rafiq Masih (White Washer)** reported in **2015(4) SCC 334**, the excessive payments made mistakenly to Group D employees and retired employees, cannot be recovered. The relevant portion is extracted hereunder:



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18. *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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WEB COPY 9. Since admittedly the petitioner has worked as a daily wager and got superannuated on 20.04.2009 and the sum of Rs.28,430/- is alleged to have been excessively paid to the petitioner towards the wrong calculations on the part of the respondents in making the wages towards the dearness allowances for the period from 01.04.2004 to 22.10.2010, the impugned order passed by the respondents in respect of recovering this amount cannot be sustained.

10. In view of the above aspects, the impugned order passed by the 3rd respondent cannot be sustained and accordingly set aside. The respondents are directed to release the payments withheld by them within a period of four weeks from the date of receipt of copy of the order.

11. Accordingly, this Writ Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

30.08.2024

Index :Yes/No
Neutral Citation : Yes
Speaking order : Yes
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G.ARUL MURUGAN, J

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