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W.P.No.6509 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2024

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.6509 of 2020
and
W.M.P. No. 7728 of 2020

G.Siva

... Petitioner

Vs.

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai – 600 009.

2. The Administrative Officer(Cash),
O/o. The Director of Public Health
and Preventive Medicine,
DMS Campus, Teynampet,
Chennai – 600 006.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records connected with the proceedings issued in Na. Ka. No. 045303 – Pattiyal – Iru4 – 2019 dated 12.06.2019 passed by the second respondent and quash the same.



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For Petitioner : Mr.R.Naresh Kumar

For Respondents : Mr. K.Tippu Sulthan,
Government Advocate

ORDER

This Writ Petition has been filed challenging the order in Na. Ka. No. 045303-Pattiyal-Iru4-2019, dated 12.06.2019, passed by the second respondent.

2. The learned counsel for the petitioner submitted that the petitioner joined service as Field Assistant on 19.08.1987, and was promoted to Lab Assistant on 01.05.1991. Thereafter, he was promoted to Health Inspector on 06.08.2008. Eventually, he retired from service on 31.01.2008. The learned counsel for the petitioner further submitted that at the fag end of the tenure, the second respondent issued an order of recovery vide impugned proceedings dated 12.06.2019. It was also submitted that there was no misrepresentation on the petitioner's part, and that recovery after retirement would be iniquitous and harsh. Therefore, the learned counsel for the petitioner prayed to allow this Writ Petition.



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3. Per contra, the learned Government Advocate appearing for the respondents would contend that the excess pay was paid beyond their entitlement. Therefore, he would support the recovery order and pray to dismiss the Writ Petition.

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

5. It would be useful to refer to the judgement of the Hon'ble Supreme Court of India in ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** [(2015) 4 SCC 334]. The relevant paragraph is paragraph 18, which reads as follows:-

“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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:



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- (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.*

5. From the perusal of the records, it is revealed that the petitioner was retired on 31.01.2018. According to the impugned order, while fixing the fitment after the revised pay, there was excess pay from 01.08.2010 to 31.01.2018. Therefore, the petitioner was paid a sum of Rs.1,05,437/- beyond his entitlement. However, there is no proof before this Court to show



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that this payment was a result of misrepresentation by the petitioner. Besides, the impugned order has been issued subsequent to the retirement of the petitioner. Therefore, such an order for recovery, after a period of five years from the date of excess pay and also after the retirement, would definitely be inequitable and harsh order against the petitioner.

6. Though this Court would like to confirm the fitment order, it allows the writ petition in respect of the recovery of excess pay alone. Accordingly, the order dated 12.06.2019, insofar as it relates to excess pay alone, is quashed.

7. In the result, this Writ Petition is allowed as indicated above.

04.10.2024

kv

Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No



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C.KUMARAPPAN, J.

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