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W.P.No.11282 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.11282 of 2018
and W.M.P.No.13180 of 2018

J.Jayabalan

... Petitioner

Versus

1.The Tahsildar
Kottagiri,
Kottagiri Post,
The Nilgiris – 643 217.

2.The Collector of Nilgiris
Udhagamandalam
The Nilgiris District – 643 001.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings dated 13.03.2018 in Na.Ka.A1 No.345/2018 passed by the 1st respondent herein and quash the same.

For Petitioner : M/s.A.Bobbli
For Respondents : Mr.E.Vijay Anand, AGP

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and perused the materials available on record.



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2. The case of the petitioner is that he was appointed as Village Administrative Officer on 26.04.1984 and after completing Trainings in various villages in Nilgiris District attained superannuation on 31.07.2018. Whileso, the petitioner was serving at Konavakkarai Village holded additional in charge for Kodanad, Hallimayar and Kallampalayam Villages from 01.07.2014 to 30.11.2014 as per the direction issued by the 1st respondent. Thereafter, the petitioner claimed payment for the work done as VAO, additional in charge for the aforesaid period, the claim was processed and approved by the 1st respondent and forwarded to the Treasury Officer and after due verification a sum of Rs.1,13,064/- was paid during October 2015.

3. Subsequently, the petitioner received a notice in Na.Ka.A1.No.345/2018 dated 13.03.2018 issued by the 1st respondent stating that the employees belonging to Group-C service are not eligible to get the payment for the work done as additional in charge and only the Group “A” and “B” service employees are eligible for the payment and directed to repay the amount received immediately. Thereafter, the petitioner made a representation dated 18.04.2018 to the 1st respondent, praying to drop the proceedings for recovery. As there is no response from the respondents, left with no other alternative remedy, the petitioner filed the present writ petition.



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4. The learned counsel for the first respondent filed counter, wherein it is averred that the petitioner had submitted application dated 18.04.2018 knowing fully well that he belongs to Group-C service and not eligible to get payment for additional in charge work as per GO.MS.No.122 dated 03.10.2011. It is also clarified that additional payment can be sanctioned for holding full additional charge of one or more posts to Group A and B officers and Group C and D employees were not eligible for additional pay for holding full additional charge. It is further submitted that it is an undeserved monetary benefit which was paid to the petitioner and not excess payment. Hence, the learned counsel prays for dismissal of the writ petition.

5. The learned counsel for the petitioner submitted that the action of the 1st respondent asking to repay the entire amount paid to the petitioner for the work done as VAO additional in charge for the period from 01.07.2014 to 30.11.2014 without issuing any show cause notice is arbitrary and unsustainable in law.

6. The learned counsel further contends that the impugned order is erroneous, in view of the fact that the petitioner worked as VAO additional in charge as per the directions given by the 1st respondent.



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7. The learned counsel further contends that it is settled law that the amount once finally sanctioned cannot be revised to the disadvantage of the retired Government servants.

8. On the other hand, the learned Additional Government Pleader appearing for the respondents submits that the additional pay can be sanctioned for holding one or more posts to Group A & B officers only, Group C & D employees were not eligible for additional pay for holding full additional charge. The petitioner has wrongly claimed the said amount by misrepresentation. It is not excess payment made to the petitioner, as such, the learned counsel sought for dismissal of the writ petition.

9. It is an undisputed fact, while the petitioner was serving as VAO at Konavakkarai Village, he was given additional in charge of Kodanad, Hallimayar and Kallampalayam villages from 01.07.2014 to 30.11.2014, for holding additional in charge post, the petitioner was paid an amount of Rs.1,13,064/- as special allowance. By impugned proceedings dated 13.03.2018, the 1st respondent directed the petitioner to refund the amount paid to him towards special allowances for holding additional in charge.



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10. It is an admitted fact that the petitioner retired from service on attaining superannuation and now he is depending on his pension.

11. This Court gave anxious consideration to the submissions made by the respective counsels and carefully perused the materials available on record including the reliance placed by the learned counsel for the petitioner.

12. Admittedly, in the present case, before passing the impugned order, the 1st respondent did not choose to issue show cause notice to the petitioner calling for his explanation. It is settled law that without issuing any notice to the aggrieved party, passing an order is in violation of the principles of natural justice. As such, in our considered view, the order impugned in this writ petition is passed in violation of the principles of natural justice.

13. In fact, on several occasions, identical issue came up for consideration before this Court. By following the proposition of law laid down by the Hon'ble Apex Court in *Rafiq Masih (White Washer) (supra)*, this Court set aside the proceedings of recovery in *W.P.No.6945 of 2022, dated 26.06.2023* and in *W.P.(MD) No.16106 of 2016, dated 20.07.2023*. The relevant portion of the



judgment of the Hon'ble Apex Court in **Rafiq Masih (White Washer) (supra)**, is extracted hereinafter:

“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 employers right to recover.”



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14. In the judgment cited supra, the Hon'ble Apex Court held that recovery from employees belonging to Class III and Class IV service or Group C and Group D service and recovery from retired employees or employees who are due to retire within one year of the order of recovery would be impermissible in law.

15. In the present case, the petitioner belongs to Group C employee and retired from service, as such, the action of the 1st respondent in issuing the impugned order for recovery from the petitioner is impermissible under law, as such the impugned order is liable to be set aside.

16. On consideration of the facts and circumstances of the present case and in the light of the authorities cited supra, this Court has no hesitation to hold that the action of the first respondent in issuing the impugned order of recovery is illegal, arbitrary and unjust and in violation of the principles of natural justice and accordingly, the impugned order is hereby set aside.

17. For the above reasons, this Writ petition is allowed.

18. Consequently, connected miscellaneous petition is closed.

19. There shall be no order as to costs.

29.01.2024

Index :Yes/No

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Neutral Citation : Yes/No
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BATTU DEVANAND, J.

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To

1.The Tahsildar

Kottagiri, Kottagiri Post,

The Nilgiris – 643 217.

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