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W.P.Nos.3436 & 3437 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 11.09.2024

CORAM:

**THE HONOURABLE MRS.JUSTICE N. MALA**

W.P.Nos.3436 & 3437 of 2016  
and WMP.Nos.2805, 2806, 34949 and 34950 of 2016

Ambi

... Petitioner  
in W.P.No.3436 of 2016

Subramani

... Petitioner  
in W.P.No.3437 of 2016

**Vs.**

1. The Assistant Director (Marketing)  
Sericulture Department,  
Krishnagiri District.

2. The Director of Sericulture  
Anaimeedu,  
Salem – 1.

... Respondents  
in both writ petitions

**COMMON PRAYER :** Writ Petitions are filed under Article 226 of Constitution of India, to issue Writ of Certiorari calling for the records of the first respondent in Na.Ka.No.595/A/2015-1, dated 07.12.2015 and quash the same is being arbitrary and non-speaking.

For Petitioners : Mr.Dinesh Kumar



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W.P.Nos.3436 & 3437 of 2016

for Mr.Mukund R. Pandiyan  
in both writ petitions

For Respondents : Mr. R.Kumaravel  
Additional Govt. Pleader  
in both writ petitions

### **COMMON ORDER**

These writ petitions are filed for issuance of a Writ of Certiorari to call for the records of the first respondent in Na.Ka.No.595/A/2015-1, dated 07.12.2015 and quash the same as being arbitrary and non-speaking.

2. The petitioners were originally appointed as daily wage workers to work in the Sericulture Farm with effect from the year 1992 and their wages were fixed as per G.O.Ms.No.64, dated 18.10.2004. The petitioners were paid daily wages of Rs.82.50 + Dearness Allowance as set out in the said Government order. The petitioners were also paid the arrears as fixed in the said Government order. The arrears were paid in the year 2006 and 2007. While so, without any notice, proceedings were issued in the year 2013, stating that the petitioners were paid excess amount of Rs.83,430/- and the same was sought to be recovered by deducting a sum of Rs.500/- each per month from the petitioner's salary.



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3. According to the petitioners no excess payments were made towards Dearness Allowance and as a matter of fact the amounts were paid strictly in consonance with the Government orders. Without assigning any reason and without furnishing calculation for the alleged excess payments, the respondents sought to recover a sum of Rs.83,430/- from each of the petitioners. Hence the petitioners were constrained to file writ petitions in W.P.No.23541 of 2015 and W.P.No.23542 of 2015 challenging the orders of the respondents seeking to recover the amount from the petitioners. This Court vide order dated 21.09.2015 allowed the writ petitions by setting aside the orders of the respondents dated 24.06.2013, with further direction to the first respondent to issue notice with reasons for effecting the recovery with liberty to the petitioners to submit a reply to the same.

4. The petitioners state that in pursuance of the above order of this Court, the respondents without assigning any reasons again sought to recover a sum of Rs.83,430/- from the petitioners vide notice dated 30.10.2015. The said notice also did not cite any reasons for claiming excess payment. Further no calculation was furnished for the amount claimed as excess payment.



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Nevertheless, the petitioners submitted detailed representations citing various Government Orders in support of their stand that there were no excess payments as alleged. After receiving the petitioners representations, the first respondent passed the impugned order. Challenging the same the present writ petitions are filed.

5. The first respondent filed a detailed counter stating that it was their bounden duty to recover the excess Dearness Allowance paid to the petitioners to safe guard the interest of the Government Treasury. The first respondent further stated that whenever any Government servant was found to have been paid salary or wages in excess (i.e.,) over and above the amount fixed by the concerned authority, the said excess amount was liable to be recovered without any exception. The respondent hence stated that the writ petition was sans merit and deserved to be rejected.

6. The learned counsel for the petitioner relying on the judgment of the Hon'ble Supreme Court of India in the case of **State of Punjab and others vs. Rafiq Masih (White Washer) and others** reported in 2015 (4) SCC 334 submitted that no recovery whatsoever could be made against the



petitioners who were daily wage employees belonging to “D” category and therefore the impugned order dated 07.12.2015 was unsustainable.

7. Heard both learned counsels.

8. The Hon'ble Supreme Court in the case of Rafiq Masih held 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 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.***



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*(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”.*

Admittedly the petitioners are daily wagers and belong to group 'D' category.

9. In view of the judgment of the Hon'ble Supreme Court cited supra recovery is impermissible and so the impugned orders dated 07.12.2015, passed by the first respondent seeking to recover the excess Dearness Allowance from the petitioners are quashed. Accordingly, these writ petitions are allowed. No



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costs. Consequently, connected miscellaneous petitions are also closed.

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Index : Yes /No

Speaking Order : Yes/No

To

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Sericulture Department,  
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Anaimedu,  
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**N. MALA, J.**

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