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W.P.No.21977 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.21977 of 2017
and
W.M.P.No. 23040 of 2017

R. Lakshmanan

... Petitioner

Vs.

1.The Superintendent,
Central Prison,
Coimbatore.

2.The Principal Accountant General (A & E),
Chennai – 600 018.

... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent relating to order in Pro.No.1945/Po1/2016 dated 18.07.2016, to quash the same and to consequently direct the respondents herein to forthwith refund the amount recovered from the petitioner till date to the petitioner.

For Petitioner : Mr. R. Apoorva
for Mr. M. Ravi

For Respondents : Mrs. C. Sangamithirai, for R1
Special Government Pleader
Ms. J. Sree Vidya, for R2



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ORDER

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Heard the learned counsel for the petitioner and the learned Special Government Pleader for the first respondent and the learned counsel for the second respondent and perused the materials available on record.

2. The case of the petitioner is that he joined in the post of Warder, Grade II in Prison Department on 13.10.1983 and granted Special Grade with effect from 13.10.2003. Thereafter, the petitioner was promoted to the post of Upgraded Warder Grade-I with effect from 29.11.2005 and as per GO.Ms.No.67, Finance (PC) department dated 26.02.2011, the pay was refixed with effect from 01.01.2006 vide Pro.No.15645/SJ2/13 dated 10.06.2014 on par to Junior Tr.M.Sakthivel at Rs.11,120/- from 01.07.2006 and drawing increments in the scale of pay from 01.07.2015. Subsequently, the petitioner was promoted to the post of Assistant Jailor-I and retired from service on 30.06.2016. In the meanwhile, the first respondent vide impugned order in Pro.No.1945/Po.1/2016 dated 18.07.2016 informing that the refixation of pay at Rs.11,120/- with effect from 01.07.2006 is in violation of instruction in Para 5(1)(b) of GO.Ms.No.235, Finance (PO) Dept dated 01.06.2009 and the total sum of Rs.90,822/- has been paid to the petitioner for the period from 01.03.2011 to 30.06.2016 is ordered to be recovered from the DCRG payable to the petitioner. In turn, the petitioner made a representation dated



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10.12.2016 to the first respondent and also sent a reminder on 20.06.2017. As there is no response from the respondent, left with no other alternative option, the petitioner filed the present writ petition.

3. A counter affidavit has been filed on behalf of the respondents. It is averred in the counter is that as per para No.5(i)(b) in GO.Ms.No.234 Finance (PC) Department dated 01.06.2009 the petitioner is not eligible to fix his pay on par with his junior since his junior is getting pay in the pay band of Rs.5,200-20,200 + Grade Pay 2,600/- and the petitioner is getting his pay in the pay band of Rs.5,200-20,200 + Grade Pay 2,800/- and the pay of the petitioner was refixed in proceedings No.1945/G1/2016 dated 18.07.2016 and the excess amount of Rs.90,822/- was ordered to be recovered from the DCRG of the petitioner. The aforesaid recovery was effected based on the instructions given by the Accountant General as per the GO.Ms.No.234 Finance (PC) Department dated 01.06.2009. Hence, the learned counsel for the respondents prays for dismissal of the petition.

4. 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.



5. 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.

6. Admittedly, in the present case, before passing the impugned order, the 2nd respondent did not choose to issue show cause notice to the petitioner calling for his explanation. As such, in our considered view, the order impugned in this writ petition is passed in violation of the principles of natural justice.

7. 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 hereinunder:

“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:

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(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.”*

8. The Hon'ble Apex Court in **Thomas Daniel (supra)**, while considering identical issue, held as extracted hereinunder:

“(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was



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subsequently pointed out by the Accountant General.

(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.”

9. This Court in **W.P.(MD) No.17154 of 2016** and **W.P.(MD) No.22395 of 2016**, while dealing the identical issues, has set aside the orders for recovery impugned therein.

10. 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 second 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.

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

12. Consequently, connected miscellaneous petition is closed.

13. There shall be no order as to costs.

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Index :Yes/No

Neutral Citation :Yes/No

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