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W.P.No.31012 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

W.P.No.31012 of 2023

and

W.M.P.No.30660 of 2023

S.Sumathi

... Petitioner

Vs.

1.The Registrar General,
High Court of Madras,
Chennai – 600 104.

2.The Additional District Judge,
Tiruvannamalai,
Tiruvannamalai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the entire records relating to the order dated 03.10.2023 passed by the Additional District and Sessions Judge, Tiruvannamalai/2nd respondent herein and quash the same.

[Prayer amended as per order dated 16.02.2024 in W.M.P.No.31002 of 2023 in W.P.No.31012 of 2023]



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For Petitioner : Mr.C.Munusamy
For R1 and R2 : Mr.B.Vijay

ORDER

(Order of the Court was made by **S.M. SUBRAMANIAM, J.**)

The amended prayer sought for in the present writ petition is to call for the records relating to the order dated 03.10.2023 passed by the learned Additional District and Sessions Judge, Tiruvannamalai, and quash the same.

2.The petitioner joined as Steno Typist in the Judicial Department on 01.09.1994. She was promoted to the post of Assistant on 29.02.2012. Thereafter, she was promoted to the post of Head Clerk and redeployed to the post of Grade-II Bench Clerk. When the petitioner was promoted to the post of Assistant on 29.02.2012, her pay was fixed at Rs.17400 + 4200 GP in the Scale of Pay of Rs.PB1-9300-34800 + 4200 GP. Subsequently, the Audit Wing raised an objection stating that inadmissible sanction of increment was granted to the petitioner in excess. Thus, the pay and allowances for the period from 29.02.2012 to 31.08.2022 amounting to Rs.1,76,868/- was



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sought to be recovered. Consequently, the impugned order of recovery has been issued.

3.Mr.C.Munusamy, learned counsel for the petitioner, would contend that there is no misrepresentation or otherwise on the part of the petitioner. On her promotion to the post of Assistant, her pay was revised and subsequently, she was receiving the salary as applicable. Subsequently, based on the Audit objection, the impugned order of recovery has been issued. The petitioner has given an undertaking that the recovery is to be made by way of installments in view of the fact that any lumpsum recovery would affect her livelihood. Such an undertaking given by the petitioner cannot be taken against her and thus, the recovery is to be set aside.

4.Mr.B.Vijay, learned counsel appearing on behalf of the respondents, opposed the contentions by stating that the petitioner has voluntarily given an undertaking that the excess allowances paid to her amounting to Rs.1,76,868/- shall be recovered by way of installments from her salary. Once an undertaking is given by the employee, now she cannot turn around



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and seek quashing of the order.

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5. We are of the considered opinion that the petitioner has not given such undertaking at the time of revision of pay and grant of allowances in the year 2012. Only after the show cause notice was issued and excess salary is sought to be recovered, the petitioner has given a letter stating that, in the event of any recovery, it is to be made by way of installments so as to protect her livelihood. Such an undertaking cannot be held against the petitioner. The fact remains that the fixation was done at the instance of the Establishment and not due to the misrepresentation on the part of the petitioner. She had not given any undertaking at the time of fixation of pay and grant of allowances. The recovery has been imposed based on the Audit objection raised subsequently. Thus, the petitioner is entitled to avail the benefit of the ratio laid down by the Hon'ble Supreme Court in the case of ***State of Punjab and others v. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***. The relevant paragraph of the judgment 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 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.”*

The petitioner, admittedly, during the relevant point of time, was working in Group-C post and therefore, the recovery of excess salary need not be made.



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The petitioner is entitled to avail the benefit granted by the Supreme Court in *White Washer's case (supra)*.

6.In view of the above judgment, the revised fixation made to the petitioner stands confirmed. The petitioner is eligible to draw salary as per the Pay Rules and Government Orders in force. Since the relief sought for in the present writ petition is against the recovery alone and the petitioner has not challenged the revised fixation, the impugned order stands quashed in respect of recovery alone. Consequently, this writ petition is allowed. No costs. Connected miscellaneous petition is closed.

(S.M.S., J.) (K.R.S., J.)
05.03.2024

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Speaking order : Yes / No
Neutral Citation : Yes / No

To



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