



W.P.(MD)No.156 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.156 of 2023 &
W.M.P.(MD)No.147 of 2023

M.S.Murugan,
S/o.P.M.M.Sankar,
Field Assistant,
District Backward Classes Welfare Office,
Virudhunagar, Virudhunagar District.

...Petitioner

vs.

1.The Assistant Director cum Personal Assistant to Collector,
District Land Survey and Records Department,
District Collectorate, Virudhunagar.

2.The District Backward Class Welfare Officer,
Virudhunagar District, Virudhunagar.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari calling for the records pertaining to
the impugned order of the first respondent in ந.க.அ.6/1228/2021 dated
23.12.2022 and quash the same as illegal and unlawful.

For Petitioner : Mr.C.Joseph Sathianeson

For Respondents : Mr.M.Ramesh,
Government Advocate



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ORDER

Heard Mr.C.Joseph Sathianeson, learned counsel for the petitioner and Mr.M.Ramesh, learned Government Advocate for the respondents.

2. The petitioner has filed this writ petition seeking to quash the impugned order, which cancels the special grade pay given him and recovers the grade pay paid to him.

3.1. The petitioner was originally a staff of Khadi Board. Since Khadi Board had some financial constrains, the Government of Tamil Nadu called for willingness from the employees of the Board to be absorbed to other Government / public sector / corporations / autonomous bodies. The Government has taken proactive measures and issued G.O. (Ms.)No.154 (Handloom, handicrafts, Textiles and Khadi (F2) Department) dated 21.11.2009 by framing guidelines for absorption of excess staffs from Khadi Board to other Government Departments. However, while issuing G.O.(Ms)No.154 (Handloom, handicrafts,



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Textiles and Khadi (F2) Department) dated 21.11.2009, it was made clear that the persons so absorbed in other Government Departments will be considered as new appointees and they will not get service benefits, however, they are entitled only for pay protection and not service protection. But the benefit of said G.O., is not applicable to those who volunteered to retire under Voluntary Retirement Scheme.

3.2. By proceedings dated 03.03.2010 in Na.A.2/5619/2009, the petitioner was absorbed in the Land Survey and Records Department and appointed as Field Assistant in the office of Special Thasildhar, Backward Classes Welfare, Viruthunagar. At a later point of time, considering the service rendered by him, he was included under the old pension scheme.

3.3. Subsequently G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012 has been issued conferring service protection also to the excess employees of the Khadi Board who were subsequently absorbed in the Government Departments.



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3.4. While so, the Secretary to Government, Handloom, Handicrafts Textiles and Khadi Department has issued a letter dated 19.12.2017 directing all the Head of the Departments to treat the grant of special grade/selection grade to the employees who were absorbed from the Khadi Board to various Departments as illegal and further directed them to recover the payment already made to the employees. Based on the aforesaid letter, the Commissioner of Survey and Settlement Department passed an order dated 08.03.2018 directing the Office of the Head of the Land Survey and Records Department to cancel special grade and recover the pay from the individuals. Challenging the above proceedings, the petitioner has filed a writ petition before this Court in W.P.(MD)No.7342 of 2018 and the same was allowed and the authorities were directed to pass orders afresh after hearing the petitioner.

3.5. However, even without issuing any notice and without hearing the petitioner, the first respondent passed an order in ந.க.அ. 6/1228/2021 dated 23.12.2022 cancelling the special grade granted to the petitioner and ordered to recover the payment already made to him.



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Challenging the same, the petitioner is before this Court.

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4. The Hon'ble Supreme Court of India in the case of *State of Punjab and others vs. Rafiq Masih (White Washer)* reported in AIR 2015 SC 696 had held that the recovery of excess payment wrongly made by the Department to Group-C and Group-D employees is impermissible in law. This Court, in similar circumstances, in *W.P.No.1122 of 2020 and batch dated 23.11.2023 [M.Santha vs. The Joint Director (Employment), O/o.Director of Employment and Training, Guindy, Chennai - 600 032 and batch]* by invoking '**White Washer**' case has observed thus.

"15.Mr.J.Pooventhera Rajan, learned counsel for the petitioner cited the decision rendered in "White Washers" case to canvas his point that the stipulation made in White Washers case is applicable to the petitioners and even for the sake of argument, if the payment made to the petitioners are considered excess, it cannot be recovered. In paragraph 12 of the White Washers case the following summary has been given:



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"12. 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



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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.”

16. No doubt, the Petitioner who are working as Junior Assistants would fall under Class IV employees and some of them had retired from service and the recovery is sought to be made after five years. So the conditions (i) to (iii) are squarely applicable to facts of the case. However, in the case on hand, it is not excess payment but the payment due to be paid to the Petitioners, and hence it cannot even be considered as excess payment and hence no need to give the concession.

17. Because there is a conceivable difference between concession and entitlement. The 'entitlement' represents a right which can be exercised or claimed and the concession is a relaxation or liberty given by someone at his discretion, and hence the receiver cannot have any control or claim over concession.



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What is being enjoyed by the Petitioners are only entitlement derived from G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012. Hence the impugned order issued for recovery of the payment already made and to stop making further payment is due to misinterpretation and misunderstanding of the scope of the above Government Order.

18.In view of the above stated reasons, the impugned orders in the respect Writ Petitions are set aside and these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."

5. In the case on hand, the petitioner is appointed as Field Assistant and therefore, he comes under Class III employees. Further the recovery of payment is sought to be made after five years. In such circumstances, the '**White Washer**' case cited above is squarely applicable to the facts of the present case.



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6. In view of the same, the writ petition stands allowed and the

order of the first respondent in ந.க.அ.6/1228/2021 dated 23.12.2022 is hereby quashed. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.04.2024

NCC: Yes/No

Index : Yes/No

Speaking/Non-Speaking order

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To

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2.The District Backward Class Welfare Officer,
Virudhunagar District,
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R.N.MANJULA, J.

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