



W.P.(MD).Nos.822 of 2024 & 29399 to 29407 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.822 of 2024 & 29399 to 29407 of 2023

W.P(MD)No.822 of 2024:

C.Baskaran

... Petitioner

Vs.

1.The Agricultural Production Commissioner and
Secretary to Government,
Agriculture Department,
Secretariat, Chennai-600 009.

2.The Director of Agriculture,
Chepauk, Chennai-600 005.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respondent for making payment of Rs.5,30,763/- recovered from the petitioner as per the provisions contained by the Government in G.O.Ms.No.401 Finance (Pay Cell) Department dated 12.11.2020 within a time frame fixed by this Court.

For Petitioner : Mr.S.Visvalingam



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For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

All the petitioners were serving as Assistant Director of Agriculture with the Department of Agriculture, Government of Tamil Nadu. During 2006, while they were serving Assistant Agriculture Officer / Agricultural Officer, by the proceedings of the Assistant Director of Agriculture / Joint Director of Agriculture, the pay of the petitioners was refixed as per the recommendation of the Pay Grievance Redressal Committee. By way of implementation of the recommendations of the Pay Grievance Redressal Committee 2019, G.O(Ms) No.401 of the Finance (Paycell) Department, dated 12-11-2020 came to be issued. Following which, revision of scales of pay of Agriculture Officer / Horticulture Officer, Assistant Director of Agriculture / Assistant Director of Horticulture, Deputy Director of Agriculture / Deputy Director of Horticulture, Joint Director of Agriculture / Joint Director of Horticulture in Agriculture Department was effected. Consequently on the implementation of revision of scale of pay ordered by Pay Grievances Redressal Committee, 2019, it is ordered that **any excess emoluments / pension already drawn by the**



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employees / pensioners in the categories of Agriculture Officer / Horticulture Officer and its promotional posts in Agriculture / Horticulture Department up to October 2020 shall not be recovered. The said order finds place in paragraph no.19 of G.O(Ms) No.401 Finance (Paycell) Department, dated 12-11-2020.

2. Thereafter, vide proceedings of the Joint Director of Agriculture of the respective areas, recovery orders came to be passed as against the petitioners on various dates for various periods commencing from December 2010. The details of the recovery orders passed against the various petitioners are tabulated for easy consideration as follows:

S.No	W.P number & Name of the petitioner	Date of retirement	Recovery ordered for the period	Amount of recovery & Date of recovery order	Date of remission of recovery amount	Recovered before / after retirement
1.	W.P(MD)No. 29399 of 2023 (A.Palaniappa)	30.06.2023	01.12.2010 - 31.03.2023	Rs.7,50,037/- 02.05.2023	19.06.2023	At the verge of retirement
2.	W.P(MD)No. 29400 of 2023 (K.Jawahar)	31.03.2019		Rs.3,81,742/- 12.10.2018	Recovered from DCRG on 30.07.2019	After retirement



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3.	W.P(MD)No. 29401 of 2023 (P.Murali)	23.02.2021 (voluntary retirement)	01.12.2010-31.10.2020	Rs.5,37,452/- 05.02.2021	10.02.2021	Before / at the verge of retirement
4.	W.P(MD)No. 29402 of 2023 (C.Baskaran)	31.08.2022	01.12.2010-30.09.2017	Rs.3,21,570/- 22.08.2022	24.08.2022	Before / at the verge of retirement
5.	W.P(MD)No. 29403 of 2023 (R.Rengarajan)	30.04.2020	22.07.2013 - 30.09.2017	Rs.4,17,767/- 21.07.2020	23.07.2020	After retirement
6.	W.P(MD)No. 29404 of 2023 (A.Sivakumar)	28.02.2023	01.12.2010-30.09.2017	Rs.6,31,758/- 28.07.2022	14.02.2023	Before / at the verge of retirement
7.	W.P(MD)No. 29405 of 2023 (V.Ganesan)	30.06.2016	01.01.2008-31.03.2012	Rs.3,32,028/- 03.06.2016	Recovered from DCRG on 03.06.2016	At the verge of retirement
8.	W.P(MD)No. 29406 of 2023 (S.Jeyachandran)	30.04.2023	01.12.2010-31.10.2017	Rs.3,07,881/- 07.03.2023	14.03.2023	Before / at the verge of retirement
9.	W.P(MD)No. 29407 of 2023 (S.Soundarraj)	10.05.2021 (voluntary retirement)	01.12.2010-27.08.2020	Rs.5,04,357/- 05.02.2021	12.04.2021	At the verge of retirement
10.	W.P(MD)No. 822 of 2024 (C.Baskaran)	31.08.2022	October 2017 – May 2020	Rs.5,30,763/- 26.05.2020	22.06.2020 (Rs. 2,30,763/-) 24.06.2020 (Rs. 3,0,000/-)	Before retirement



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3. A careful perusal of the details tabulated in the tabular column supra would reveal that recovery orders have been passed either after retirement or at the verge of retirement. The issue of recovery where payments have mistakenly been made by the employer, in excess to the entitlement of the employee, has already been dealt with by the Honourable Apex Court in the case of ***State of Punjab and Haryana Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334.***

4. The Honourable Apex Court has summarized a few situations, wherein recoveries by the employers would be impermissible in law and the same is extracted as follows.

“18....(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.

(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



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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.”

5. Except the cases in W.P(MD)No.29402 of 2023 and W.P(MD)No.822 of 2024, all the other cases would be covered by situation 2 depicted by the ***Rafiq Masih (White Washer)*** case. As far as the cases in W.P(MD)Nos.29402 of 2023 & 822 of 2024 are concerned, the same would be covered by situation 3 as summarized by the Honourable Apex Court. Hence, the petitioners made representations to the respondents on various dates seeking to refund the amount recovered from them at the verge of retirement/ after retirement. However, the same were not considered and were kept pending endlessly by the respondents. In view of the same, these writ petitions came to be filed.

6. It is pertinent to mention here that vide G.O(Ms)No.401, dated 12-11-2020 Finance (Paycell) Department, it has been mandated that any excess emoluments / pension already drawn by the employees / pensioners in



the categories of Agriculture / Horticulture Officer up to October 2020 shall not be recovered. However, in these instant cases, except the case of Palaniappa.A in W.P(MD)No.29399 of 2023, in all the other cases recovery orders have been passed for the excess emoluments / pension drawn by the employees up to October 2020.

7. In the cases of W.P(MD)No.29400 of 2023 and 29405 of 2023, on the basis of the recovery orders dated 12-10-2018 and 03-06-2016, the respondents have recovered the respective amount from the DCRG of the petitioners on 30-07-2019 and 03-06-2016 respectively. G.O(Ms)No.401 came to be issued on 12-11-2020. In W.P(MD)Nos.29400 and 29405 of 2023, on the basis of the recovery orders, recovery has been effected by the respondents from the DCRG of the petitioners even before the issuance of G.O(Ms)No.401. All the other cases after the issuance of G.O(Ms)No.401, dated 12-11-2020, the petitioners themselves have voluntarily remitted the excess payment received during various periods in terms of the recovery orders passed by the respondents as against them on various dates. The said payment has been made by the various petitioners without raising any objection in terms of G.O(Ms)No.401 dated,



12-11-2020 at the time of remitting the recovery amounts, in terms of the proceedings of the Joint Director ordering recovery of excess payment received by the petitioners. Only after remitting the same, without challenging the recovery orders by means of a representation, the petitioners have sought for refund of the amount which was recovered / remitted by them.

8. No doubt all the recoveries made as against the petitioners by the respondents are impermissible in terms of **Rafiq Masih (White Washer)** case. As per Article 141 of the Constitution of India, the law declared by the Honorable Apex Court is binding on all the Courts within the territory of India. The said judgment of **Rafiq Masih (White Washer)** case reported in **(2015) 4 SCC 334** would bind the facts and circumstances of this case which categorically states that there can be no recovery from a person who has retired or a person who is at the verge of retirement. That apart, the relevant G.O(Ms)No.401, dated 12-11-2020 also categorically mandates that excess payments / emoluments / pensions made up to October 2020 shall not be recovered. However, without challenging the various recovery orders issued as against the petitioners, the petitioners have filed a Writ of Mandamus seeking



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to direct the respondents to refund the recovered amount in terms of G.O(Ms)No.401, dated 12-11-2020.

9. I am of the considered view that, without challenging the recovery orders passed by the respondents on various dates as against the petitioners, the petitioners cannot claim refund of the recovered amount by filing a Mandamus simpliciter. In view of the same, all the writ petitions are disposed of, giving liberty to the petitioners to challenge the various recovery orders issued by the respondents as against the petitioners. No costs.

11.03.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

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To

1.The Agricultural Production Commissioner and
Secretary to Government,
Agriculture Department,
Secretariat, Chennai-600 009.

2.The Director of Agriculture,
Chepauk, Chennai-600 005.



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L.VICTORIA GOWRI, J.

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