



W.P.(MD).No.9595 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.9595 of 2024

and

W.M.P(MD).Nos.8694 & 8595 of 2024

B.Kottai Ilangovan

... Petitioner

Vs.

1.The Director,
Rural Development and Panchayat Raj Department(E4),
Panagal Maligai Building,
Saidapet, Chennai-15.

2.The District Collector,
Collectorate,
Ramanathapuram District.

3.The Block Development Officer(Village Panchayat),
O/o.the Block Development Officer,
Thirupullani,
Ramanthapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of Recovery in Se.Mu.No.Na.Ka.Thi2/3405/2023 dated 05.03.2024 on the file of the Respondent No.3 and quash the same as illegal and consequently



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directing the Respondent Nos.2 and 3 not to recover the amount of revised pay fixation for the period from 09.08.2000 to 04.05.2001.

For Petitioner : Mr.I.Pinaygash
For R1 & R2 : Mr.S.Shanmugavel
Additional Government Pleader
For R3 : Mr.M.Lingadurai
Special Government Pleader

ORDER

This Writ Petition has been filed seeking to quash the order dated 05.03.2024 passed by the third respondent and consequently directing the second and third respondents not to recover the amount of revised pay fixation for the period from 09.08.2000 to 04.05.2001.

2. Heard Mr.I.Pinaygash, learned counsel for the petitioner, Mr.S.Shanmugavel, learned Additional Government Pleader, learned counsel for the respondents 1 and 2 and Mr.M.Lingadurai, learned Special Government Pleader for the respondent 3.



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3. Mr.I.Pinaygash, learned counsel for the petitioner submitted that the petitioner was serving as Deputy Block Development Officer from 18.05.2020. The third respondent passed the impugned order of recovery dated 05.03.2024 against the petitioner's revised pay fixation amount for the period from 09.08.2000 to 04.05.2001, after a lapse of 23 years. The petitioner's pay fixation was revised way back in the year 2021 on the ground that initially the petitioner's pay fixation was fixed on 09.08.2000 on par with one Mrs.R.Rethina Jothi, but subsequently the authorities found that she was coming from District Transfer and therefore, the petitioner's pay fixation was re-fixed on par with one M.Balakrishnan who was appointed as Assistant on 04.05.2001. Therefore, the petitioner's pay fixation was revised and re-fixed from the date of 04.05.2001 instead of 09.08.2000 on par with one M.Balakrishnan. The learned counsel for the petitioner submitted that without issuing any notice or without giving any opportunity of hearing and without any enquiry, the impugned order has been passed. Hence, the petitioner has come before this Court by way of filing this Writ Petition.



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4. The matter in hand is no longer *res-integra*. This Court has already dealt with a similar issue in ***W.P.(MD).No.156 of 2023 dated 08.04.2024*** in the case of ***M.S.Murugan Vs. The Assistant Director cum Personal Assistant to Collector, District Land Survey and Records Department, District Collectorate, Virudhunagar.*** Similarly placed person has already approached this Court through the above petition and got favourable order, wherein it is held as under:

“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:

"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



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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."

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 in a relaxation or liberty given by someone at his discretion, and hence the receiver cannot have any



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control or claim over concession. 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.*

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."



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5. In the light of the above cited judgment, this Writ Petition is **allowed** and the impugned order dated 05.03.2024 is set aside. The respondents 2 and 3 are directed not to recover the amount of revised pay fixation for the period from 09.08.2000 to 04.05.2001. No costs. Consequently, connected miscellaneous petitions are closed.

18.04.2024

NCC:yes/no

Index:yes/no

Internet:yes/no

Nsr

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R.N.MANJULA, J.

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