



W.P.(MD)No.10796 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.10796 of 2024

and

W.M.P.(MD).No.9642 of 2024

M.Arjunan

... Petitioner

Vs.

1.The Principal Chief Conservator of Forest
Office of the Principal Chief Conservator of Forest,
Saidapet, Chennai.

2.The Conservator of Forests,
Dindigul Circle, Dindigul.

3.The District Forest Officer,
Office of the District Forest Officer,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders of the third respondent revising reduced pay of petitioner retrospectively in Se.Mu.Order No. Pa1/4226/2026/2024-5 dated 16.04.2024 and consequential impugned recovery order in Se.Mu.Order No.Pa1/4226/2024-1 dated 16.04.2024 and quash the same and consequently forbearing the respondents herein from making any recovery without following the guidelines issued by the Hon'ble Supreme Court in CA No.11527 of 2014 (SLP(C)No. 11684 of 2012 dated 18.12.2014 as well as G.O.Ms.No. 286 dated 28.08.2018.



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For Petitioner : Mr.K.Appadurai

For Respondents : Mr.M.Lingadurai,
Special Government Pleader

ORDER

By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.K.Appadurai, learned counsel appearing for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents.

3. This Writ Petition has been filed challenging the order of the third respondent revising reduced pay of the petitioner retrospectively in Se.Mu.Order No. Pa1/4226/2026/2024-5 dated 16.04.2024 and consequential recovery order in Se.Mu.Order No.Pa1/4226/2024-1, dated 16.04.2024 and consequently forbearing the respondents herein from making any recovery without following the guidelines issued by the Hon'ble Supreme Court in ***C.A. No. 11527 of 2014 (SLP(C)No. 11684 of 2012 dated 18.12.2014*** as well as the Government Order in G.O.Ms.No. 286, Finance (Pension) Department, dated 28.08.2018.



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4. Mr.K.Appadurai, learned counsel appearing for the petitioner would submit that the order of recovery has been passed without even putting the petitioner on notice and by virtue of the above order, the impermissible recovery has been made on the allegation that the petitioner has been made excess payment from the year 2013. Reliance was placed by Mr.K.Appadurai, learned counsel counsel of the Hon'ble Supreme court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others*** reported in ***(2015) 4 SCC 334***, in which, following guidelines have been issued:

“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 the retired employees, or employees who are due to retire within one year, of the order of recovery.



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(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 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. The petitioner claims that his case would fall under Clause (i) and (iii) as the petitioner was working as a Driver. The recovery has been made after an inordinate delay and the impugned orders have been passed without giving notice against the principles laid down in the above Supreme Court's case. Hence, the impugned orders are liable to be set aside with regard to the recovery alone. Insofar as the fixation is concerned, it can be done after the petitioner was given with the show cause notice.



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6. In view of the aforesaid reasons, this Writ Petition stands **allowed** and the impugned order passed by the third respondent revising reduced pay of petitioner retrospectively in Se.Mu.Order No. Pa1/4226/2026/2024-5 dated 16.04.2024 and the consequential impugned recovery order in Se.Mu.Order No.Pa1/4226/2024-1 dated 16.04.2024 are hereby set aside. The respondents are at liberty to refix the scale of pay, if it is found necessary after giving show cause notice to the petitioner and affording him an opportunity to make his submission in this case. No costs. Consequently, connected miscellaneous petition is closed.

30.04.2024

Index:yes/no
Internet:yes/no
Ncc : yes/no
TSG
To

- 1.The Principal Chief Conservator of Forest
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R.N.MANJULA, J.

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