



W.P.(MD)No.14119 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.14119 of 2024

and

W.M.P.(MD)Nos.12393 and 12394 of 2024

Herold P.M.Robert

... Petitioner

Vs.

1.The Deputy Director,
O/o.The Deputy Director,
Tamil Nadu Fire and Rescue Service,
Southern Region, Madurai.

2.The District Officer,
O/o.The District Officer,
Tamil Nadu Fire and Rescue Service,
Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order in Na.Ka.No.5974/Aa/2022 dated 16.04.2024 and consequentially the impugned order in Na.Ka.No.4542/Aa/2024 dated 25.05.2024 on the file of the second respondent and quash the same as illegal.

For Petitioner : Mr.G.Karthik
For Respondents : Mr.M.Sidharthan
Additional Government Pleader



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ORDER

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This writ petition has been filed to quash the order in Na.Ka.No. 5974/Aa/2022 dated 16.04.2024 and the consequential impugned order in Na.Ka.No.4542/Aa/2024 dated 25.05.2024 on the file of the second respondent.

2.Heard Mr.G.Karthik, learned counsel for the petitioner and Mr.Sidharthan, learned Additional Government Pleader for the respondents.

3.The petitioner was appointed as a Fireman on 01.12.2002 and he was promoted as Upgraded Leading Fireman on 01.12.2017. He was given incentive increment vide G.O.Ms.No.777, Home (Police-XVII) Department. Thereafter, by proceedings dated 13.01.2022, the Department has ordered to revise the pay scale stating that the pay fixation along with the increment has been wrongly fixed for the period from 01.12.2017 to 31.05.2021 and accordingly, the salary of the petitioner was revised and re-fixed.

4.However, now the order dated 16.04.2024 has been issued for recovering a sum of Rs.46,764/-, being excess amount drawn by the petitioner. At the time when the pay was re-fixed, the petitioner was not given with any



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proceedings for recovery. Now, after five years from 2017, the present order has been issued for recovery without putting the petitioner on notice. Challenging the same, the petitioners are before this Court.

5. The Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696*** had held that recovery of excess payment wrongly made by the Department to Group-C and Group-D employees is impermissible in law. In similar circumstances, this Court 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 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.”



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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. 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



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aside and these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."

6. In the case on hand, the petitioner was appointed as Fireman and therefore, they come under Group 'C' employees. Further, the recovery 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. Since the recovery is impermissible in law as per the decision cited supra, the recovery is set aside.

7. In view of the same, the Writ Petition is allowed and the impugned order of the second respondent in reference Memo in Na.Ka.No. 5974/Aa/2022 dated 16.04.2024 and the consequential order in Na.Ka.No. 4542/Aa/2024 dated 25.05.2024 are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

01.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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To

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O/o.The Deputy Director,
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- 2.The District Officer,
O/o.The District Officer,
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R.N.MANJULA, J.

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