



W.P.(MD)No.19006 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.19006 of 2022

and WMP (MD) No.13878 of 2022

P.Mariappan

: Petitioner

Vs.

Tenkasi District Backward Classes
and Minorities Welfare Officer,
Tenkasi.

: Respondent

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records connected with the impugned order of recovery of Rs.10,659/- for the months from 8/2022 to 5/2024 for 21 months passed by the respondent in Se.Mu.No.Gna1./2809/2019 dated 11.08.2022 and quash the same and consequential direct the respondent to refund the recovered amount from the pay of the petitioner.

For Petitioner : Mr.S.Govindan

For Respondent : Mr.N.Ramesh Arumugam

Government Advocate



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ORDER

This writ petition has been filed challenging the order of recovery in Se.Mu.No.Gna1.2809/2019, dated 11.08.2022, passed by the respondent for a sum of Rs.10,659/- (Rupees Ten Thousand Six Hundred and Fifty Nine only) for the months from 8/2022 to 5/2024 (21 months) and for a consequential direction to refund the recovered amount to the petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

3. When the matter was taken up for admission on 22.08.2022, this Court had granted an order of interim stay and the same is extrated hereunder:-

“The petitioner is working as Cook, who is the Class IV employee. The contemplated recovery, through the impugned order dated 11.08.2022, owing to excess payment of the benefits of 6th pay commission, is impermissible in law, since the mistake was



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committed by the Department and also it was prior to five years, in view of the decision of the Hon'ble Supreme Court, in the case of State of Punjab & Others vs. Rafiq Masih (White Washer) reported in AIR 2015 SC 696. Hence, there shall be an order of interim stay.”

4. The learned Government Advocate appearing for the respondent has submitted a written instruction vide Na.Ka.No.Gna1/2809/2020 dated 20.08.2022, wherein, it has been stated that in the case of the petitioner, the period was calculated mistakenly from 01.01.2007 instead of 20.09.2007 and a sum of Rs.10,659/- (Rupees Ten Thousand Six Hundred and Fifty Nine only) was paid in excess to the petitioner and hence, the order of recovery was issued to recover the same from the petitioner.

5. It is pertinent to note that the Hon'ble Supreme court of India in the case of ***State of Punjab & Others vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696***, wherein, the Hon'ble Apex Court was of the view that the recovery could not be made to the monetary benefits wrongly extended to the employee for a period in excess of five



years. The relevant paragraph is extracted hereunder:-

“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.



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(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."

6. In view of the above judgment of the Hon'ble Supreme Court of India, the order of recovery issued by the respondent is liable to be quashed and accordingly, the same is quashed.

7. The respondent is directed to recover the excess amount of a sum of Rs.10,659/- (Rupees Ten Thousand Six Hundred and Fifty Nine only) paid to the petitioner from the concerned officer who is responsible for the mistake as per G.O.Ms.286, Finance (Pension) Department, dated 28.08.2018 from his monthly salary.

8. In the result, the writ petition stands allowed with the above direction. Consequently, the connected miscellaneous petition is closed. No costs.

19.10.2024

Index : Yes / No
Internet : Yes / No

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J.SATHYA NARAYANA PRASAD, J.

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To

Tenkasi District Backward Classes
and Minorities Welfare Officer,
Tenkasi.

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