



W.P.(MD) No.13122 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.13122 of 2018

and

W.M.P.(MD) Nos.11988 19868 of 2018

R.Thanuvalingam

... Petitioner

-VS-

- 1.The Secretary to Government
Rural Development and
Panchayat Raj Department
St.Fort George, Chennai-600 009
- 2.The Accountant General
Accountant General Office
Anna Salai, Chennai
- 3.The Commissioner
Rural Development and Panchayat Raj
Panagal Buildings
Saidapet, Chennai
- 4.The Director of Local Fund
Accounts and Audit
571, Anna Salai
Nanthanam, Chennai
- 5.The District Collector
Kanyakumari District
Nagercoil



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6.The Commissioner

Rajakkamangalam Panchayat Union
Pazhavilai, Kanyakumari District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records and quash the impugned order passed by the sixth respondent in his proceedings Na.Ka.No.A1/235/2017, dated 06.02.2018, on the ground that the same is arbitrary, illegal and without jurisdiction, consequently directing the sixth respondent to pay arrears and other allowances from 1998 to 2010 within a time frame to be stipulated by this Court.

For Petitioner : Mr.G.Ramanathan

For Respondents : Mr.S.Kameswaran
Government Advocate for R1, R3 to R5
Mr.P.Gunasekaran for R2
No appearance for R6

ORDER

The petitioner has challenged the order seeking for repayment of the alleged excess payments made to him. Under the impugned order, the respondents have directed the petitioner to refund the excess payments alleged to have been made to him as per the Sixth Pay Commission.

2. The petitioner claims that since he is an Electrician, the decision rendered by the Honourable Supreme Court in the case of **State of**



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Punjab and others vs. Rafiq Masih (White Washer), reported in **AIR 2015**

SC 696, applies and that no recovery can be made from him as he belongs to Class-III service.

3. However, learned Government Advocate appearing for the official respondents would submit that while making the excess payments to the petitioner, the petitioner had given an affidavit of undertaking to the respondents to the effect that in case in the near future the same is found to be wrong, he shall refund the excess payments. He would further contend that the respondents, as seen from the counter affidavit, that the post held by the petitioner is not a sanctioned post and therefore, excess payments made to him have to be refunded.

4. The matter came up for hearing on 05.08.2024. On that day, learned counsel for the petitioner sought time to get instructions as to whether the petitioner had given an affidavit of undertaking to the respondents to the effect that he shall refund the excess payments, in case in near future the same is found to be true.



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5. Today, learned counsel for the petitioner submits that the affidavit of undertaking was in fact given by the petitioner to the respondents, as stated in the counter affidavit filed by the official respondents. The affidavit of undertaking has also been placed on record by the learned Government Advocate appearing for the official respondents and the affidavit of undertaking is dated 28.01.2016. As per the affidavit of undertaking, the petitioner has undertaken to refund the payments back to the respondents in case in near future it is found that there are excess payments made by the respondents. Admittedly, the said affidavit of undertaking has not been withdrawn by the petitioner till date. A counter affidavit was also filed by the official respondents before this Court on 28.11.2018 and in Paragraph Nos.4 and 6, they have categorically stated that the petitioner had given an affidavit of undertaking that he shall refund the money back to the respondents, in case they are found to be excess payments. Even after filing of the counter affidavit in the year 2018, the petitioner has not communicated with the respondents that he is withdrawing the affidavit of undertaking. The respondents have also contended that the post held by the petitioner is not a sanctioned post.



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6. Admittedly, the payments made to the petitioner, which is the subject matter of this writ petition, are excess payments. The same has also not been disputed by the petitioner in this writ petition. The only contention raised by the petitioner is that since he is a Class-III employee, no recovery can be made, even though the payments made by the respondents are excess payments. Having given an unconditional affidavit of undertaking to the respondents that he shall refund the money, in case in near future it is found to be excess payments and that too when the post held by him is not a sanctioned post, the question of stopping the respondents from recovering the excess payments made to the petitioner does not arise. In the result, there is no merit in this writ petition.

7. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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ABDUL QUDDHOSE, J.

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