BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P(MD)No.8474 of 2019
and
W.M.P.(MD) No.6635 of 2019

J.Angel Mary ... Petitioner

Vs.

1. The Inspector General of Registration,
   Tamil Nadu Registration Department,
   Santhome, Chennai.

2. The District Registrar,
   Marthandam,
   Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent pertaining to its proceeding bearing No.1666/A/2018, dated 05.04.2018 and the proceedings bearing No. 1666-1/A/2018, dated 28.02.2019 and to quash the same and consequently direct the respondents not to make any recovery.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 05.04.2018 passed by the District Registrar, Marthandam, Kanyakumari District, for recovering for a sum of Rs.2,15,461/- has been claimed being the excess amount paid from 2013 to 2019.

2. The case of the writ petitioner is that, the petitioner joined the service on 04.05.1983 as daily wages. She was confirmed in the post of Kadhi Assistant Grade-III with effect from 01.03.1993 and her probation was declared on 10.08.1995. The Kadhi Village and Industries Board were facing excess employees in the Kadhi Department. While so, there were vacancies available in the Registration Department and it was agreed by the Registration Department to absorb the excess employees, who are working in Kadhi Village and Industries Board. She was absorbed in the respondent Department as Record Clerk. Her services were regularised during 10.08.1995 and she was granted Selection Grade during 2008 with effect from 2005. She was also paid the arrears for the period from 2005 to 2008.

She was granted Special Grade by proceedings dated 22.07.2013 and the benefits were also granted. In pursuant to the same, she has been continuously receiving the benefits including increments and other benefits which are all eligible to her. While so, she was absorbed from Kadhi Village and Industries Department, she was given pay protection as well as service protection. At no point of time, she has made any representation for seeking the benefits and she has been received the benefits only in accordance with the Government Orders. Perhaps, by communication dated 09.03.2018, there was a direction to recover the amount alleged to have been excessly paid without even issuing any notice and without affording any opportunity to her. Therefore, the order impugned came to be passed recovering for a sum of Rs.2,15,461/- being the excess amount paid to the petitioner only from 2013 to 2019. Hence, the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the order impugned in the writ petition came to be passed without following the principles of natural justice. The order impugned in the writ petition came to be passed without any basis and the petitioner has not aware of the same and the petitioner was not at all given an opportunity to put forth her

case. He would further submit that in similar circumstances, the Hon'ble Single Judge of this Court in W.P(MD) Nos.4597 to 4601 of 2022, dated 16.03.2022 has considered the issue and directions were issued and prayed for to consider the present writ petition also on the same terms of the order passed by the learned single Judge of this Court.

4. The learned Additional Government Pleader appearing for the respondents would submit that in order to provide an opportunity to the petitioner, the respondents are ready to issue a notice to the writ petitioner and thereafter will pass an appropriate orders in this regard.

5. It is seen from the records, it is not in dispute the order impugned in the writ petition came to be passed without issuing any notice to the writ petitioner. In this regard, the order referred by the learned counsel for the petitioner in W.P(MD) Nos.4597 to 4601 of 2022, dated 06.03.2022 in paragraph Nos. 9 to 11 are extracted as follows:

> "9. The contention of the petitioners are that the Commissioner of Commercial Taxes vide letter dated

27.08.2015 has issued a letter directing the authorities to consider and issue Selection Grade and Special Grade. However, the proper authority is the Secretary, Handloom, Handicrafts, Textiles and Khadi Department, where the said authority has specifically stated that the absorbed candidates are not eligible for Selection Grade and Special Grade and the service rendered in Khadi Board cannot be taken into account for conferring Selection Grade and Special Grade.

10. This Court is of the considered opinion that the absorption itself is a concession. The Government has granted pay protection initially and has granted pension by calculating the service period rendered in Khadi. The initial absorption itself is to avoid loss and initially, service protection was denied to avoid the extra expenses. Thereafter, the Government has issued G.O.Ms. No. 152, wherein, it has been clearly stated that this is only for pensionary benefits. Hence the Commissioner of Commercial Taxes letter dated 27.08.2015 is against the G.O.Ms. No. 152. Thereafter, the Secretary, Handloom, Handicrafts, Textiles and Khadi Department has clarified vide Letter dated 19.12.2017 that the petitioners and the like persons are not entitled to the benefit of selection grade and special

grade. This letter dated 19.12.2017 is in accordance with G.O. Ms. No. 152.

11. Therefore, this Court is passing the following order:

a.That the said letter dated 19.12.2027 of the Secretary, Handloom, Handicrafts, Textiles and Khadi Department is in accordance to the G.O. Ms.No. 152 and is valid;

b.That the letter dated 27.08.2015 issued by the Commissioner of Commercial Taxes is against the G.O.Ms. No. 152 and the same is not valid;

c.Since the petitioners were granted selection grade and special grade based on the letter dated 27.08.2015, the government shall take action against the erring official; and

d.The respondents are directed to issue show cause notice to the petitioners and after giving opportunity shall pass speaking order on the entitlement, thereafter shall pass the recovery order if the petitioners are not entitled to."

6. On perusal of the facts of the case on hand, this Court is of the view that the judgment relied on by the learned counsel for the petitioner is applicable, Hence, this Court is inclined to allow this writ petition. The respondents are directed to issue show cause notice to the petitioner and after giving opportunity shall pass speaking order on the entitlement, thereafter shall pass the recovery order if the petitioner is not entitled to.

7. With the aforesaid direction, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

24.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Inspector General of Registration,
Tamil Nadu Registration Department,
Santhome, Chennai.

2. The District Registrar,
Marthandam,
Kanyakumari District.

M.JOTHIRAMAN,J.

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