

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.9317 of 2016 and
W.M.P. No.8305 of 2016

A.Udayasuriyan

.. Petitioner

-VS-

1.The District Collector,
Tiruppur District,
Tiruppur.

2.The Commissioner,
Vellakoil Panchayat Union,
Vellakoil 638 111, Tiruppur District.

3.The Assistant Director of Local Fund Audit,
Tiruppur.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to para 26 of the Audit Objection raised by the third respondent for the year 2011-12 and quash the same and further direct the respondents to refund a sum of Rs.83,794/- recovered from the petitioner's salary.

For Petitioner : Mr.V.Suthakar

For respondents : Mr.S.Gunasekaran,
Additional Government Pleader
for R1 and R3

O R D E R

The petitioner, A.Udayasuriyan, who was working as Special Skilled Assistant Grade -II at Panchayat Union, Vellakoil, suffered an order of recovery of a sum of Rs.83,794/- and Rs.40,237/- from his salary on the basis of audit objection raised by the local fund audit on the ground that excess salary was paid due to fixation of selection grade in Fitter Grade II from 01.06.1988, has come to this Court.

2.Learned counsel appearing for the petitioner, placing reliance on the judgment of the Apex Court in the case of State

of Punjab and others vs. Rafiq Masih and others reported in 2015 (4) SCC 334, prayed this Court to apply the ruling of this Court with retrospective effect.

3. But this Court is not able to accept his submission. The reason is that after a lapse of two years, in the light of the aforementioned judgment, the petitioner has brought the present writ petition seeking to challenge the old order. When the respondents have recovered a sum of Rs.1,24,031/-, two years prior to the date of retirement namely on 29.02.2016, the aforementioned case is not applicable, as no recovery was made one year prior to the date of retirement in the said case. Hence, the aforesaid case cannot be made applicable to the case on hand. The impugned order dated 01.02.2016 merely shows, after the re-fixation of his salary for the period from 01.06.1988 to 31.10.2015, as per the audit report, that the petitioner was paid an excess amount of Rs.4,06,647/-, out of which, the petitioner had paid back Rs.1,24,031/-. However, the balance amount of Rs.2,82,616/- alone has been directed to be deducted. The petitioner admittedly has not challenged the recovery order of Rs.4,06,647/- at any point of time. Therefore, the petitioner taking support of the subsequent judgment passed by the Hon'ble Supreme Court, cannot refuse to pay a part of Rs.2,82,616/-. Hence the reliance made by the petitioner on the latest judgment aforementioned is wholly unacceptable. This apart, the petitioner has also suppressed the filing of a similar writ petition. Therefore, this Court, exercising the equity jurisdiction, is not inclined to entertain the writ petition filed with unclean hands. That apart, the recovery in this case was done on 21.12.2015 and the petitioner was also permitted to retire from service on 29.02.2016. Therefore, due to lapse of huge time, this Court is not in a position to apply the said order with retrospective effect. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected M.P. is also dismissed.

vga

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. The District Collector,
Tiruppur District,
Tiruppur.

2. The Commissioner,
Vellakoil Panchayat Union,
Vellakoil 638 111, Tiruppur District.

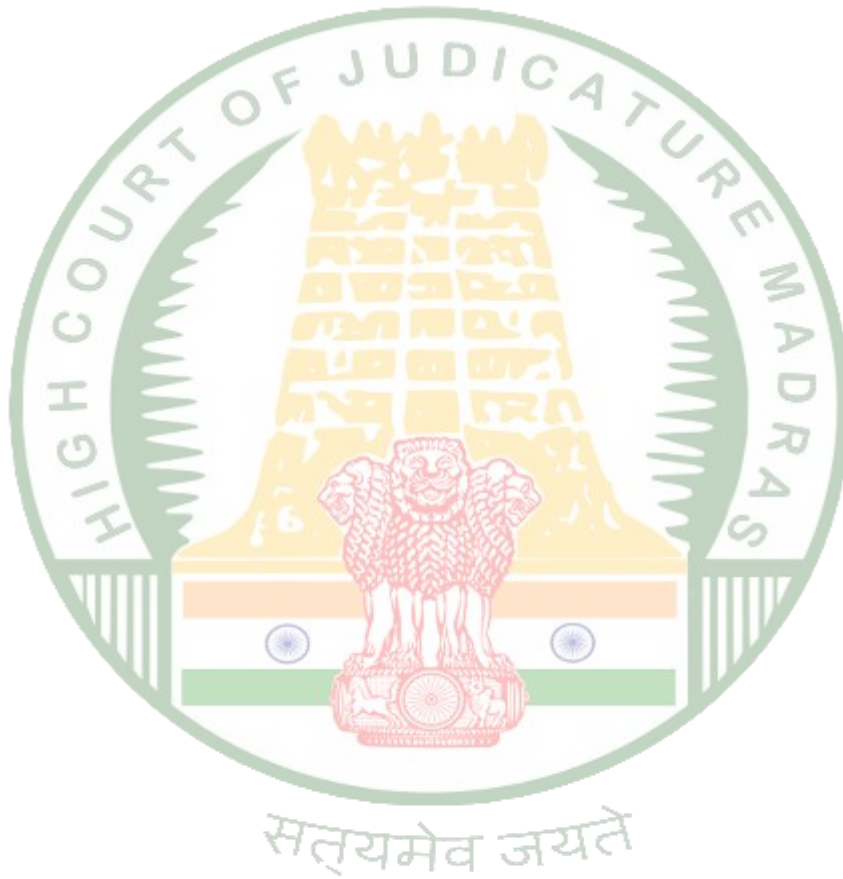
3.The Assistant Director of Local Fund Audit,
Tiruppur.

+ 1 cc to Mr.V.Suthakar, Advocate SR 16218

+ 1 cc to Mr.R.M.Muthukumar, Advocate SR 16358

sr(co)
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