

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 9.11.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1373 of 2017
and
C.M.P.No.18848 of 2017

The District Treasury Officer,
(District Treasury),
Perambalur.

Appellant

Versus

1. D.Susairaj
2. The Accountant General of
Tamil Nadu,
Teynampet, Mount Road,
Chennai 600 006.

Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 19.8.2016 passed in W.P.No.2647 of 2014 on the file of this court.

WP.No.2647 of 2014:Writ Petition has been filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to repay the recovered amount of Rs.1 19 735 with interest at the rate of 12% per Annum and pay the cost of this Writ Petition.

For appellant : Mr.R.Prathapkumar, AGP
For R1 : Mr.R.Premnarayan
For R2 : Mr.G.Vijayshankar

JUDGMENT

(Judgment of the court was made by RMT.TEEKAA RAMAN, J.)

Challenging the correctness of the order passed by the learned Single Judge, wherein the State was directed to repay the amount recovered from the writ petitioner relying upon the decision in STATE OF PUNJAB AND OTHERS v. RAFIQ MASIH (WHITE WASHER) ((2015) 4 SCC 334), the present writ appeal has been filed.

2. The facts of the case required for disposal of the writ appeal are as follows:-

Consequent to the revision of the pay as per the V Pay Commission, the pension payable to the writ petitioner, who retired on 30.8.2016, was wrongly calculated and subsequently, based on the objection raised by the internal audit, it was found that some amount seems to have been paid in excess and hence, ordered for recovery and a consent letter was obtained from the writ petitioner on 28.11.2011, wherein he has given consent for recovery of the amount in monthly instalments basis. Accordingly, he has paid a sum of Rs.1,90,000/- and the entire amount has been recovered. After completion of the installation, the writ petitioner filed the present writ petition in the year 2014, contending that the said recovery is illegal relying upon the decision as cited supra.

3. We have given our anxious consideration to the submissions made by the learned Additional Government Pleader appearing for the appellant and the learned counsel appearing for the respondents, who took notice at the time of admission.

4. Our attention has been drawn to the decision in the White Washer's case wherein it has been held that such a recovery is impermissible. But, the case on hand, in its facts and circumstances, stand on a different footing for more than one reason. Firstly, when the mistake in calculation of the pension was found out during the month of August 2011 and recovery was started from October 2011 till June 2013 based on the consent given by the writ petitioner, the writ petition has been filed in the year 2014. In the case relied upon by the writ petitioner, he had moved the court in time, but, in the case on hand, the writ petitioner has not moved this court in time and further, he had submitted himself for recovery of the amount paid in excess in monthly instalments as per the consent letter dated 28.11.2011 and subsequently, the entire amount as claimed in the audit objection also seems to have been recovered but, only thereafter, he has filed the writ petition for return of the recovered amount. Therefore, in the facts and circumstances of the case, the judgment cited supra, relied upon by the writ petitioner will not come to his rescue. In that view of the matter, we uphold the contentions of the learned Additional Government Pleader.

5. Accordingly, the writ appeal is allowed and the order passed by the learned Single Judge is set aside. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To:

1. The District Treasury Officer,
(District Treasury),
Perambalur.

2. The Accountant General of
Tamil Nadu,
Teynampet, Mount Road,
Chennai 600 006.

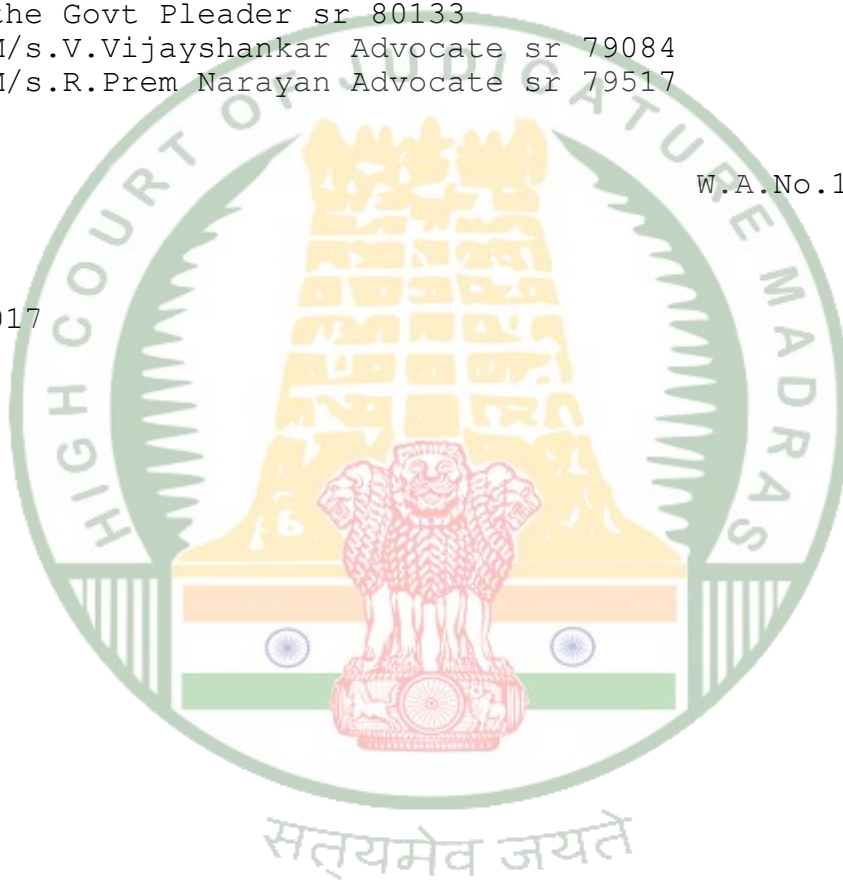
+1 cc to the Govt Pleader sr 80133

+1 cc to M/s.V.Vijayshankar Advocate sr 79084

+1 cc to M/s.R.Prem Narayan Advocate sr 79517

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