

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.33799 of 2004 and W.V.M.P.No.592 of 2005 and
W.P.M.P.No.40878 of 2004

A.Rosalind ... Petitioner

Vs.

1. The State of Tamil Nadu through its
Secretary, Education Department
Fort. St. George, Chennai 9.
2. The Accountant General Office,
Annal Salai, Madras 600 018.
3. The Treasury Officer,
Sub-Treasury Office, yercaud,
Salem 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 relating to the order passed by the third respondent in Na.Ka.No.622/2003/M/ dated 06.02.2004 and quash the same thereby forbearing the respondents from implementing the above said order of the third respondent in Na.Ka. No.622/2003/M/ dated 06.02.2004.

For Petitioner : Mr.A.R.Nixon,

For Respondent : Mrs.K.Bhuvaneswari for R1 & R3,
Government Advocate.
Mr.G.Poonkunran for R2

O R D E R

The petitioner is a retired Government servant and she worked as Secondary Grade Teacher, Panchayat Union Elementary School, Yercaud and retired on 30.04.1988. After the retirement, the petitioner was drawing the retirement benefits from November 2003 - February 2004. The third respondent has refused to pay the pension amount and orally informed the petitioner that she was paid mistakenly excess amount of pension and the third respondent directed the petitioner to pay the excess amount of

Rs.97,523/-. However, due to old age, the petitioner paid a sum of Rs.25,000/-. Thereafter, she was not able to pay the amount demanded by the third respondent. Accordingly, the recovery order was passed. Aggrieved by the same the present writ petition is filed.

2. The present case on hand is squarely covered by the decision of the Hon'ble Apex Court reported in (2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others, the relevant portion of which, reads as follows.

"10. In view of the aforesaid constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the state, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within on year, of the order of recovery.

(iii) Recovery from the 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 when 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.

(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.

(Emphasis Supplied)

3. In view of the above, this writ petition is allowed and the impugned order dated 06.02.2004 is set aside. No Costs. Consequently, the connected miscellaneous petition is also closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Secretary, Education Department
Fort. St. George, Chennai 9.
2. The Accountant General Office,
Annal Salai, Madras 600 018.
3. The Treasury Officer,
Sub-Treasury Office, yercaud, Salem District.

+1cc to M/s.A.R.Nixon, Advocate SR.No.67847
+1cc to Government Pleader SR.No.68371

W.P.No.33799 of 2004

SDR 23.10.2017