



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2018

CORAM:

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.13055 of 2013

S.M.Mohamed Uthuman Ali

... Petitioner

Vs.

The Chief Executive Officer,
O/o.the Tamil Nadu Wakf Board,
No.1, Jaffer Sirang Street,
Vallal Seethakathi Nagar,
Chennai - 1.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order issued by the respondent in his proceedings Lr.No. 10990/D3/2011 dated 03/11/2011 and quash the same as illegal and consequently to direct the respondent to refund the amount of Rs.56,000 within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran
For Respondent : Mr.K.K.Senthil

O R D E R

The order of recovery dated 03.11.2011 is under challenge in this writ petition.

2.The writ petitioner was holding the post of Assistant Secretary and retired from service on 30.06.2011 on attaining the age of superannuation.

3.The learned counsel appearing on behalf of the writ petitioner states that the impugned recovery order was issued based on the audit objection and the alleged excess amount of the year 1996. Thus, the order of recovery is unsustainable. This apart, it is contended that no notice or opportunity was provided to the writ petitioner before issuing the impugned order and therefore, the same is in violation of the principles of natural justice.

4.The learned counsel appearing on behalf of the respondents states that the recovery was imposed based on the audit objection and the excess amount was paid to the writ petitioner is sought to be recovered. Thus, there is no irregularity in respect of the



excess amount already paid to the writ petitioner.

5. This Court is of an opinion that the correction of errors in respect of the fixation of pay is certainly permissible. However, the excess amount if any paid cannot be recovered after a lapse of so many years based on the audit objection. There was no misrepresentation on the part of the writ petitioner and there was no undertaking also.

6. Under these circumstances, the excess amount paid at the instance of the Department cannot be recovered from the writ petitioner. In the present writ petition, no show cause notice or opportunity was provided to the writ petitioner. However, the legal principles in respect of the recovery is now settled by the Hon'ble Supreme Court of India in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in (2015) 4 Supreme Court Cases 334 settled by the principles in paragraph 18, which is extracted here under:

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 the 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 one 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 where 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.

7. In view of the judgment cited supra, this Court is of an opinion that the writ petitioner is a pensioner and no notice or opportunity was provided to the writ petitioner before issuing the order of recovery. Thus, the impugned order passed by the respondent in Lr.No. 10990/D3/2011 dated 03.11.2011, is quashed and the excess amount already recovered from the writ petitioner is directed to be reimbursed within a period of 12 weeks from the date of receipt of a copy of this order.



8. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

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Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

+ 1 CC TO Mr.C.VENKATESHKUMAR, ADVOCATE IN SR No. 55011
+ 1 CC TO Mr.K.K.SENTHIL, ADVOCATE IN SR No. 55035

MM

TE/RSK/SAR-3 : 04/05/2018 : 3P/3C

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