



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 13.03.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)Nos.4248 to 4254 of 2019

and

W.M.P(MD)Nos.3368 to 3374 of 2019

S.Balusamy	..Petitioner in W.P(MD)No.4248 of 2019
S.Marimuthu	..Petitioner in W.P(MD)No.4249 of 2019
S.Mariappan	..Petitioner in W.P(MD)No.4250 of 2019
C.P.Prahalathan	..Petitioner in W.P(MD)No.4251 of 2019
K.Kaja Mohamed	..Petitioner in W.P(MD)No.4252 of 2019
U.Swaminathan	..Petitioner in W.P(MD)No.4253 of 2019
V.Rajendran	..Petitioner in W.P(MD)No.4254 of 2019

Vs

1.The District Collector,
Sivagangai District,
Sivagangai - 630 561.

2.The Treasury Officer,
District Treasury,
Sivagangai,
Sivagangai District.

3.The Tahsildar,
Manamadurai Taluk,
Sivagangai District.

4.The Sub-Treasury Officer,
Sub-Treasury,
Thirupuvanam,
Sivagangai District.

..Respondents in W.P(MD)Nos.4248
to 4250, 4252 and 4253 of 2019

1.The District Collector, Sivagangai District-630 561

2.The Treasury Officer, District Treasury, Madurai District

3.The Tahsildar, Manamadurai Taluk, Sivagangai District.

...Respondents in WP(MD)No.4251 of 2019

1.The District Collector, Sivagangai District-630 561



2.The Treasury Officer, District Treasury, Sivagangai District

3.The Tahsildar, Manamadurai Taluk, Sivagangai District.

4.The Sub Treasury officer, Sub Treasury,
Manamadurai, Sivagangai District

...Respondents in WP(MD)No.4254 of 2019

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records of the third respondent I.e., the Tahsildar, Manamadurai relating to his impugned memo in Na.Ka.No.A12/5289/2015, dated 7.8.2018 and quash the same.

For Petitioner :Mr.Visvalingam
in all W.Ps'

For Respondents :Mr.C.M.Mari Chelliah Prabhu
1 to 4 Additional Govt.Pleader

COMMON ORDER

The recovery, after retirement, sought to be challenged in these Writ Petitions.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The case of the Petitioners is that before retirement, lastly they served as Village Administrative Officers in various places in Thirupuvanam Taluk and retired from service on attaining the age of superannuation. The House Rent Allowance from 1.1.1996 was revised as per G.O.No.218, Finance(Allowances) Department, dated 23.3.1993 and as per G.O.Ms.No.162, Finance(Pay Cell)Department, dated 13.4.1998 and further clarification was issued in Government Letter No.30027/PC-1/1998-1, dated 28.4.1998. As per the above Government Orders and letter, House Rent Allowance was sanctioned and paid to the Petitioners. While so, on 7.8.2018, the Tahsildar, Manamadurai issued a memo in Na.Ka.No.A12/5289/2015, directing the Petitioners to remit their respective amounts, cancelling the revised House Rent Allowance paid to them. The above said memo was issued without giving opportunity to the Petitioners to submit their explanation. Further, the Tahsildar, Manamadurai directed the Sub-Treasury Officer, Thirupuvanam to recover a sum of Rs.5,000/- p.m. from their pension towards recovery of the above said amount, which is against the principles of natural justice. Hence, the Petitioners have come forward with these Writ Petitions, for the relief stated supra.



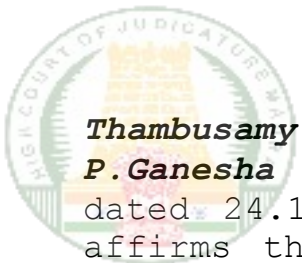
4.The learned counsel for the Petitioners relying upon the reported judgment in the case of State of **Punjab and others .vs. Rafiq Masih(White Washer) and others reported in (2015) 4 Supreme Court Cases, 334**, which stipulates the mode of recovery and opposing the stand taken by the respondents, sought to quash the impugned memo issued by the third respondent.

5.The learned counsel for the Petitioners further brought the notice of this Court to the order of this Court made in **W.P (MD) No.2647 of 2014, dated 19.8.2016** in the case of **D.Susairaj v.s. The District Treasury Officer, Perambalur and another**, wherein, this Court at paragraph 10, it is held as follows:

'10.Even though it has been claimed, by the first respondent, that the Petitioner had given his consent for recovery, the said consent cannot be taken into serious consideration, as the Petitioner had raised objections against the recovery, in his representations made to the authority concerned. It is also clear from the decision of the Supreme Court, made in State of Punjab and others .vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334 that no recovery can be made from a retired employee''

6.Such an issue was also considered by the Division Bench of this Court in W.A(MD)No.638 of 2012, dated 12.3.2018, in the case of **the Executive Engineer, Public Works Department, (Machinery Sub-Division)Chennai-5 and another .vs. P.Karuppaiah**, wherein, in para 4 it is held as follows:

'4.In the instant case, the Writ Court noted that without issuing notice to the respondent/Writ Petitioner, recovery was sought to be effected and it is not sustainable as it amounts to violation of principles of natural justice. In such circumstances, the Court would have remand the matter to the authorities for fresh consideration giving them liberty to issue show cause notice. We are to take a decision as to whether such course has to be adopted in the present appeal. The legal position as pointed out in the aforementioned decision leads to a conclusion that the respondent/Writ Petitioner is liable to make good the excess payment received by him, in the light of the undertaking. However, in the peculiar facts and circumstances of the case, the Petitioner having retired from service, the recovery of the excess amount of around Rs.20,000/-(Rupees twenty thousand only) shall not made.''



Thambusamy Road, Kilpauk, Chennai-600 010 and another .vs. P.Ganesha Rao and in yet another case in W.A.No.207 of 2019, dated 24.1.2019, has passed an order on the same lines, which affirms that there shall not be any recovery and at paragraph Nos. 5 to 8, held as follows:

5. The learned counsel for the appellants would strenuously contend that the judgement of the Honourable Supreme Court in Rafiq case (cited supra) should not be applied, because the writ Petitioner/respondent himself has consented for recovery of the amount and once he has consented the government was completely at liberty to withhold the amount. He submitted that Rafiq's case (cited supra) will not be applicable, where the retired employee consented to the recovery of the amount, which has been paid in excess to him.

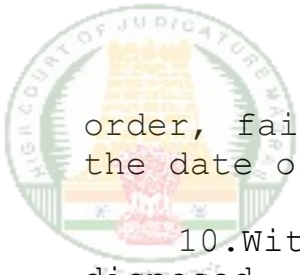
6. We are afraid that the said argument can hold water. There is nothing in the said judgement, which would state that if the employee consents, then the employer is at liberty to withhold such amount. The law laid down by the Honourable Supreme Court in Rafiq's case (cited supra) categorically states there cannot be any recovery from a retired employee. No amount of consent by a retired employee would permit the employer to withhold any amount. The law laid down by the Honourable Supreme Court is binding on all.

7. As per Article 141 of the Constitution of India, the law declared by the Honourable Supreme Court is binding on all Courts within the territory of India. The said judgement of the Rafiq's case (cited supra) is bind, which categorically states that there can be no recovery from a person, who has retired.

8. During the course of the arguments, G.O.Ms.No.286, Finance (Pension) Department, dated 28.8.2018 was brought to our notice. A perusal of the said Government Order would show that the Government has implemented the above said decision and issued a Government Order. ''

8. The learned Additional Government Pleader appearing for the respondents 1 to 4 submitted that in page No.71 of the typed-set of papers, the Petitioners themselves have already given consent for such recovery and hence, now they cannot go back from their own submissions. However, he has not objected to the decisions relied on the side of the Petitioners.

9. Following the aforesaid decisions, the impugned orders passed by the third respondent, dated 7.8.2018 stand quashed. Any recovery so far made, be refunded to the Petitioners within a period of eight weeks from the date of receipt of a copy of this



order, failing which, the same will carry interest at 6% p.a from the date of recovery made till the date of payment.

10. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Collector,
Sivagangai District,
Sivagangai - 630 561.

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District Treasury,
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3. The Tahsildar,
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4. The Sub-Treasury Officer,
Sub-Treasury,
Thirupuvanam,
Sivagangai District.

5. The Treasury Officer,
District Treasury
Madurai District

+7 CC to M/s.S.VISVALINGAM, Advocate (SR-53772 to 53778[F] dated 13/03/2019)

+1 CC to M/s.SPL GP (SR-54015[F] dated 14/03/2019)

vsn

COMMON ORDER MADE IN
W.P (MD) Nos. 4248 to 4254 of 2019
and
W.M.P (MD) Nos. 3368 to 3374 of 2019