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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.21704 of 2019
and
W.M.P.No.20917 of 2019

S.Rajamanickam

...Petitioner

Vs.

1.The Commissioner/
Director of Treasuries and Accounts,
Nandanam, Chennai - 600 015.

2.The Additional Treasury Officer,
Perambalur,
Perambalur District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent order in Na Ka No.2405/2018/E1, dated 20.12.2018 for recovery of pension and quash the same; consequently direct the respondents to reimburse the entire recovered amount to the petitioner within specified period.

For Petitioner : Mr.T.Suresh for
Mr.R.Sreedharan

For Respondents : Mr.K.V.Sajeev kumar
Government Advocate

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334, has categorically held that recovery from retired employees, particularly when the mistake of excess payment was on the part



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of the employer, is impermissible in law. The relevant portion of the order reads as follows:-

"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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from 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."

3. In the present case, the petitioner herein had retired from his services on 30.04.1992, when he was serving as a B.T. Headmaster. The reason assigned by the respondent in the impugned order dated 20.12.2018 is that, owing to G.O.Ms.No.235, dated 01.06.2009, the petitioner had been paid excess salary, while the salaries were revised from 01.01.2007 to 11/2018 and therefore, the second respondent herein was directed to recover the excess amount of Rs.1,88,271/-.

4. By applying the ratio laid down by the Hon'ble Supreme Court in the White Washer's case (supra), such an order of recovery cannot be sustained.

5. Accordingly, the impugned order passed by the second respondent herein dated 20.12.2018 is quashed and the Writ



Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

hvk

To

- 1.The Commissioner/
Director of Treasuries and Accounts,
Nandanam, Chennai - 600 015.
- 2.The Additional Treasury Officer,
Perambalur,
Perambalur District.

+1cc to the Government Pleader SR.No.35573

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and
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AK(CO)
RVM(25/08/2021)