



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.338 of 2020

and

W.M.P. (MD)No.257 of 2020

WEB COPY

R.Murugan

... Petitioner

versus

1. The Principal Secretary cum
Commissioner,
HR&CE Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

2. The Deputy Commissioner/
Executive Officer,
Arulmigu Kallalagar Thirukoil,
Alagarkoil, Melur Taluk,
Madurai District.

3. The Regional Audit Officer,
(Madurai South),
HR&CE Department,
Near Naveen Bakery,
Madurai - 625 001.

... Respondents

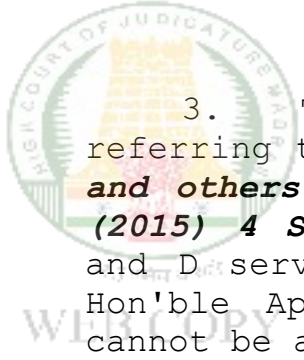
Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent, i.e. the Deputy Commissioner/Executive Officer, Arulmigu Kallalagar Thirukoil, Alagarkoil in his செ.மு.ந.க.எண் .1119/2019/அ5 dated 24.12.2019 and quash the same regarding recovery alone and direct to refund the amount of Rs.7,756/- already recovered in the salary of the petitioner for the month of December 2019.

For Petitioner	:	Mr.S.Visvalingam
For R1 and R3	:	Mr.V.Nirmal Kumar, Government Advocate
For R2	:	Mr.K.R.Laxman

ORDER

This writ petition is filed as against the order of recovery dated 24.12.2019 passed by the second respondent.

2. The second respondent, by the order of recovery impugned in this writ petition, claimed that on misrepresentation of the petitioner, his salary was wrongly calculated and he was paid Rs.4,32,609/- excess than the eligible amount.



3. The learned counsel appearing for the petitioner, by referring the decision of the Hon'ble Apex Court in **State of Punjab and others vs. Rafiq Masih (White Washer) and others**, reported in (2015) 4 SCC 334, submits that the petitioner comes under class C and D service and therefore, as per the dictum laid down by the Hon'ble Apex Court in **Rafiq Masih (White Washer)'s** case, there cannot be any recovery from the petitioner.

4. Mr.K.R.Laxman, learned counsel appearing for the second respondent submits that totally, seven persons have received excess amount by misrepresentation and among seven persons, six persons have paid the excess amount and the petitioner alone has challenged the recovery order. He further submits that the petitioner already gave an undertaking that if there is any error in fixing the salary, he would repay the excess amount. As per the undertaking given by the petitioner, he is bound to repay the amount which is paid in excess. In support of his contention, he has also relied upon the decision of the Hon'ble Apex Court in **Chandi Prasad Uniyal and others vs. State of Uttarakhand and others**, reported in (2012) 8 SCC 417.

5. This Court paid its anxious consideration to the rival submissions made.

6. It is not in dispute that the petitioner has been paid in excess than the eligible amount. The learned counsel for the petitioner submits that the Hon'ble Apex Court, while deciding the issue of recovery in the case of **State of Punjab and others vs. Rafiq Masih (White Washer) and others**, reported in (2015) 4 SCC 334, has held as follows:

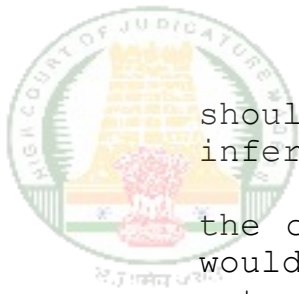
"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, 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 (for 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. According to the learned counsel for the petitioner, since the petitioner comes under class C and D service, as per the dictum laid down by the Hon'ble Apex Court in **Rafiq Masih (White Washer)'s** case, there cannot be any recovery from the petitioner.

8. The Hon'ble Apex Court in **Chandi Prasad Uniyal and others vs. State of Uttarakhand and others**, reported in (2012) 8 SCC 417, has held as follows:

14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

9. Though the petitioner comes under class C and D service, at the time of fixing the salary, the petitioner gave an undertaking that if there is any error in fixing the salary, he would repay the excess amount. Since the petitioner has given an undertaking, he cannot take any advantage of the order of the Hon'ble Apex Court in **Rafiq Masih (White Washer)'s** case. In view of the subsequent decision in **High Court of Punjab and Haryana and others vs. Jagdev Singh** reported in (2016) 14 SCC 267, the Hon'ble Apex Court, by referring the ratio laid down in **Rafiq Masih (White Washer)'s** case, has held as follows:

"11. The principle enunciated in proposition (ii)



above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

10. Since the petitioner has given an undertaking that if there is any error in fixing the salary, he would repay the excess amount, he is not entitled for the relief, as per the law laid down by the Hon'ble Supreme Court in **Jagdev Singh's** case. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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To

1. The Principal Secretary cum
Commissioner,
HR&CE Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

2. The Deputy Commissioner/
Executive Officer,
Arulmigu Kallalagar Thirukoil,
Alagarkoil, Melur Taluk,
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3. The Regional Audit Officer,
(Madurai South),
HR&CE Department,
Near Naveen Bakery,
Madurai - 625 001.

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-39673[F] dated
21/12/2021)

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-39825[F] dated 21/12/2021)

W.P (MD) No.338 of 2020
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NSN (CO)

KB (25.02.2022) 4P 6C

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