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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.2.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.2543 of 2022

Rhines Nalla Ratnam

...Petitioner

Vs.

1.The Commissioner,
Corporation Of Greater Chennai,
Ribbon Building, Chennai-600 003.

2.The Assistant Commissioner
(General Administration And Personnel)
Corporation Of Greater Chennai,
Ribbon Building, Chennai-600 003.

3.The Zonal Officer
Zone-15 Corporation Of Greater Chennai
Sholinganallur Chennai-600 119.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for Writ of Certiorarified Mandamus, calling for the impugned order of recovery passed by the 3rd respondent herein in his proceedings Ma.Aa.15.Po.Su.Thu.Na.Ka.No.H1/0979/2021 dated 06.09.2021 and quash the same and consequently direct the respondents to forthwith release the withheld amount of Rs.1,37,174/- (Rupees One Lakh Thirty Seven Thousand One Hundred and Seventy Four Only) together with interest and pay interest at the rate of 18 percent per annum on the sum of Rs.4,77,034/- (Rupees Four Lakhs Seventy Seven Thousand and Thirty Four only) from the date of due till the date of realization i.e. on 21.12.2021 owing to the reason of delay of 24 years.

For Petitioner : Mr.K.Raja

For Respondents : Mr.M.Ganesan
Standing Counsel for Corporation



O R D E R

According to the petitioner, the petitioner was working as Senior Entomologist in the respondent Corporation and superannuated on 30.6.2018. At the time of settling the terminal benefits to the petitioner, the respondent Corporation withheld a sum of Rs.1,37,174/- by stating that excess amount has been paid to the petitioner and passed the impugned recovery order. Challenging the said recovery order, the petitioner has preferred the present writ petition before this Court.

2. According to the learned counsel appearing for the petitioner, the impugned recovery order passed by the respondent is contrary to the decision rendered by the Hon'ble Supreme Court in *State of Punjab v. Rafiq Masih (White Washer and Others]* reported in (2015) 4 SCC 334.

3. The learned Standing Counsel appearing for the respondent Corporation has objected by stating that the petitioner was paid excess amount and therefore, to recover the said amount from the terminal benefits of the petitioner, the impugned recovery order has been passed.

4. In the light of the judgment made in *Rafiq Masih (White Washer and Others]* supra, wherein the Hon'ble Supreme Court as 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 (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.



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(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.''

5. Keeping in mind the ratio laid down by the Hon'ble Supreme Court in the decision cited supra, this Court is of the view that the impugned order of recovery as against the petitioner is impermissible and accordingly, the impugned recovery order is quashed. The third respondent is directed to release the said amount to the petitioner along with interest at the rate of 6% p.a. within a period of 12 weeks from the date of receipt of copy of the order.

6. In the result, the writ petition stands allowed with the above directions. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner,
Corporation Of Greater Chennai,
Ribbon Building, Chennai-600 003.
- 2.The Assistant Commissioner
(General Administration And Personnel),
Corporation Of Greater Chennai,
Ribbon Building, Chennai-600 003.
- 3.The Zonal Officer,
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Sholinganallur, Chennai-600119

+1cc to Mr.M.Ganesan, Advocate SR. No.12056

W.P.No.2543 of 2022

SVI (CO)
PR (10/03/2022)