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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 12906 of 2017

and

W.M.P. Nos. 13771 and 13772 of 2017

V.B.Vasu

... Petitioner

-vs-

1. The Secretary to Government,
Home (Police II), Dept.,
Fort St George, Chennai-600 009.

2. The Director,
Vigilance & Anti-corruption Department,
Chennai-600 016.

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the Second Respondent in connection with the impugned order passed by him in Rc. No. F1/37475/16 dated 24.04.2017 and quash the same.

For Petitioner : Mr. K.Venkatramani, Senior Counsel
for Mr. M.Muthappan

For Respondents: Mrs. C.Sangamithirai
Special Government Pleader

O R D E R

Heard Mr. K.Venkatramani, Learned Senior Counsel appearing for the Petitioner and Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has challenged the Order in Rc. No. F1/37475/16 dated 24.04.2017 passed by the Second Respondent for recovery of excess payment of Rs. 1,56,758/- in this Writ Petition. It requires to be noticed here that in furtherance to the order dated 12.01.2017 in W.P. No. 996 of 2017 filed by the Petitioner earlier before this Court, show cause notice dated



03.03.2017 had been issued to him and after considering the reply dated 30.03.2017 submitted by him in that regard, the impugned order has been passed. Further, in order to alleviate the hardship that may be caused to the Petitioner by effecting a lumpsum recovery, it has been mentioned in the impugned order that the said sum of Rs. 1,56,758/- would be recovered for a fraction of Rs. 1,758/- from his salary for May 2017 and the remaining amount of Rs. 1,74,000/- would be recovered @ Rs. 2,175/- per month in 80 equal monthly installments from June 2017 onwards.

3. Learned Senior Counsel for the Petitioner ventilates the grievance that when excess payment had been made by applying a wrong principle by the employer without any misrepresentation by the concerned employee, recovery cannot be effected, as in this case. It is not possible to accept the said contention in view of the decision of the Hon'ble Supreme Court of India in Chandi Prasad Uniyal -vs- State of Uttarakhand [(2012) 8 SCC 417], where it has been held as follows:-

"13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.

14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The 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 the 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 the



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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."

The said view has been reiterated by a Three Judge Bench of the Hon'ble Supreme Court of India in State of Punjab -vs- Rafiq Masih (White Washer) [(2014) 8 SCC 883]. In such circumstances, there does not appear to be infirmity in the impugned order in the exercise of the discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution. It is made clear that if the Petitioner is found to be entitled to the benefit of exemption from recovery, the amounts deducted shall be returned to him within a period of 30 days therefrom.

In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home (Police II), Dept.,
Fort St George, Chennai-600 009.
2. The Director,
Vigilance & Anti-corruption Department,
Chennai-600 016.

+1cc to M/s.M.Muthappan, Advocate, S.R.No.16895
+1cc to the Government Pleader, S.R.No.17046

W.P. No. 12906 of 2017

RSI (CO)
SB(16/06/2022)