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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. 12907 of 2017

and

W.M.P. Nos. 13773 and 13774 of 2017

K.P.Alisodai

... 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. F1/38615/16 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. F1/38615/16 dated 24.04.2017 passed by the Second Respondent for recovery of excess payment of Rs. 4,96,629/- in this Writ Petition. It requires to be noticed here that in furtherance to the order dated 12.01.2017 in W.P. No. 997 of 2017 filed by the Petitioner earlier before this Court, show cause notice dated



१२.५ आमेव अरुं

"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.

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 any infirmity in the impugned order requiring interference by this Court.

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4. Learned Senior Counsel for the Petitioner lastly made a fervent plea that inasmuch as the Petitioner was due to attain the age of superannuation at the time of passing of the impugned order, the Petitioner would fall under the exceptions of hardship carved out in the subsequent decision of the Hon'ble Supreme Court of India in State of Punjab -vs- Rafiq Masih (Whitewasher) [(2015) 4 SCC 334]. In this context, reference must be made to G.O. Ms. No. 286, Finance (Pension) Department dated 28.08.2018 issued by the Government of Tamil Nadu in which taking note of the principles laid down in the said decision, instructions have been provided for the manner in which any excess amount paid to Government Servants/Pensioners/Family Pensioners would have to be made. In view of the same, the Petitioner may make a representation to the concerned authority to re-consider the recovery aspect alone by 31.07.2022. If such representation is made, the concerned authority shall keep the impugned recovery in abeyance and after affording full opportunity of personal hearing to the Petitioner, consider each of the contentions raised by him for exemption from recovery and pass reasoned order on merits and in accordance with law following the procedure laid down in the instructions in G.O. Ms. No. 286, Finance (Pension) Department dated 28.08.2018 issued by the Government of Tamil Nadu, and communicate the decision taken to the Petitioner under written acknowledgement and further action to be taken shall depend upon its outcome in that regard.

In fine, the Writ Petition is disposed on the aforesaid terms. 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.

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+1cc to M/s.M.Muthappan, Advocate, S.R.No.10894

+1cc to the Government Pleader, S.R.No.17046 (16/06/2022)

W.P. No. 12907 of 2017

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