



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.01.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.32253 of 2018 and
W.M.P.No.37503 of 2018

R.Somasundaram

...Petitioner

-Vs-

1.The Secretary to Government,
Public Works Department,
Fort St.George,
Chennai - 600 009.

2. The Secretary to Government
Finance Department, Fort St.George,
Chennai - 600 009.

3. The Chief Engineer, (Buildings) (General),
Public Works Department,
Chepauk, Chennai - 600 005.

4. The Chief Engineer WRO
Public Works Department,
Chennai Region, Chepauk,
Chennai - 600 005.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order by the 3rd respondent in the letter No.E2/3104/ 2016/C.R.1VARU/Dated 02.12.2016 and quash the same and consequently direct the 3rd respondent to consider the petitioner's representation dated 15.05.2018 within the stipulated period that may be fixed by this Court.

For Petitioner : Mr.M.K.Bhoopathi Rajan

For Respondents: Mr.P.Ganesan, Government Advocate



ORDER

The petitioner herein had retired from service in the post of "Time Keeper" on 31.10.2016. During his service, his pay scale was determined at 9300-34800 + 4400. Based on certain audit objections, the present impugned order dated 02.12.2016 has been passed, stating that the petitioner's pay, during his service, was wrongly fixed and therefore sought for recovery of a sum of Rs.2,52,560/- from the retirement benefits.

2 The Hon'ble Supreme Court, in the case of State of Punjab Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334, has held that when payments have been mistakenly made by the employer in excess of the employee's entitlement and particularly when such employee has already retired from service, recovery from the retired employee is impermissible in law. Admittedly, the alleged excess salary paid to the petitioner was due to the mistake on the part of the respondents and the petitioner had no role in it. Likewise, it is also not in dispute that the petitioner had retired from service on 31.10.2016 and the present impugned order dated 02.12.2016 has been passed after his retirement and therefore the order of recovery from a pensioner cannot be sustained.

3 Accordingly, the writ petition stands allowed and the impugned order of recovery in letter No.E2/3104/C.R.1VARU/Dated 02.12.2016 is hereby quashed. In case the respondents have already recovered the amount specified in the impugned order, the petitioner is at liberty to make a representation seeking for refund, along with a copy of this order and on such a representation, the concerned respondent is directed to refund the amount within a period of six weeks from the date of a receipt of such a representation. Consequently connected miscellaneous petitions is closed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Public Works Department,
Fort St.George,
Chennai - 600 009.



+1 cc to Mr.M.K.Bhoopathi Rajan, Advocate Sr.NO. 3769
W.P.No32253 of 2018 and
W.M.P.No.37503 of 2018
ssn(CO)
A.SK(10.02.2022)