



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.06.2022**

CORAM:

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

W.P. (MD) No. 6913 of 2020

and

W.M.P. (MD) No. 6333 of 2020

WEB COPY

S.Gunasekaran

... Petitioner

/vs./

1.The Principal Accountant General (A & E),
Tamil Nadu, No.361, Anna Salai,
Chennai-600 018.

2.The Director of Collegiate Education,
Office of Director of Collegiate Education,
Chennai-600 006.

3.The District Treasury Officer,
Office of District Treasury,
Sivagangai District.

4.The Principal,
Raja Doraisingam Government Arts College,
Sivagangai.

... Respondents

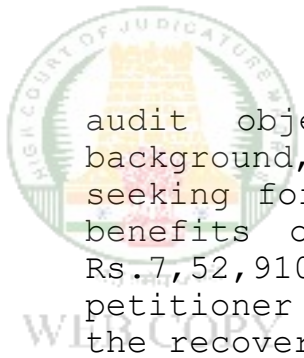
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in No.P10/1/11025241, dated 20.02.2019 and the impugned orders of the 4th respondent in Na.Ka.No.100/A/2019, dated 03.04.2019 enclosing statement of revised pay, quash the same and consequently, direct the respondents herein to refund the alleged excess pay of Rs.7,52,910/- to the petitioner.

For Petitioner	: Mr.S.Srinivasa Raghavan
For R1	: Mrs.Mahalakshmi
For R2 to R4	: Mr.S.Shaji Bino, Special Government Pleader.

ORDER

This Writ Petition has been filed challenging the order of the 1st respondent dated 20.02.2019.

2.The petitioner herein retired from service on 31.05.2019. Through the impugned order dated 20.02.2019, which was at the verge of the petitioner's retirement, it was alleged that the grade pay of the petitioner, while serving under the fourth respondent herein, was wrongly fixed in the year 2009, which claimed on the basis of an



audit objection of the fourth respondent herein. In this background, the first respondent has now issued the impugned order, seeking for recovery of a sum of Rs.7,52,910/- from the retirement benefits of the petitioner. Consequently, the same amount of Rs.7,52,910/- was also deducted from his retirement benefits. The petitioner herein now seeks for consequential relief for refund of the recovery amount.

3.The Hon'ble Supreme Court, in the **State of Punjab & Others vs. Rafiq Masih (White Washer)** reported in **AIR 2015 SC 696**, has held that recovery, where payments have been mistakenly made by the employer, is impermissible in law in the following categories:

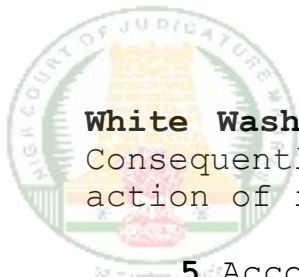
"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery. (iii) Recovery from 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."

4.The petitioner herein would fit in Clauses 12(i), 12(ii) and 12(iii) above. Since the impugned order was passed within one year prior to his retirement and also since the petitioner was group-C employee and excess payment has been made for the period exceeding five years from the date of recovery, the principle laid down in



White Washer's case would squarely apply to this petitioner also. Consequently, the impugned order of recovery and the subsequent action of recovery cannot be sustained.

5. Accordingly, the impugned order dated 20.02.2019 is quashed and there shall be a direction to the first respondent to forthwith refund the sum of Rs.7,52,910/- (Rupees Seven Lakhs and Fifty Two Thousand and Nine Hundred and Ten Rupees only) recovered from the petitioner's retirement benefits, within a period of four (4) weeks from the date of receipt of a copy of this order.

6. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

1. The Principal Accountant General (A & E),
Tamil Nadu, No.361, Anna Salai,
Chennai-600 018.
2. The Director of Collegiate Education,
Office of Director of Collegiate Education,
Chennai-600 006.
3. The District Treasury Officer,
Office of District Treasury,
Sivagangai District.
4. The Principal,
Raja Doraisingam Government Arts College,
Sivagangai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-26263[F] dated 16/06/2022)

+1 CC to M/s.SPL.GP. (SR-26404[F] dated 17/06/2022)

W.P. (MD)No.6913 of 2020
15.06.2022

AM(CO)

KB(01.07.2022) 3P 7C

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