



WP(MD)No.1540 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.06.2022**

CORAM:

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

W.P.(MD)No.1540 of 2019

Ramasamy

... Petitioner

/vs./

1.The Accountant General,
O/o. Principal Accountant General,
AGS Avenue,
Press Colony, Opp. Matuthavanai Bus Stand,
Madurai – 07.

2.The District Collector,
Tirunelveli,
Tirunelveli District.

3.The Tahsildar,
Sivakiri Taluk,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondents to repay the amount of Rs.19,132/- recovered from the petitioner's salary with 18% of interest and grant pension with 5% of personal pay payable to the petitioner by considering the representation dated 05.12.2018.



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For Petitioner : Mr.R.Karthika
For Respondents : Mr.P.Gunasekaran,
Standing Counsel for R1
Mrs.D.Farjana Ghoushia,
Special Govt. Pleader for R2 & R3

ORDER

The petitioner herein, while working as a Record Clerk under the third respondent office, was issued with the proceedings dated 25.02.2003, stating that certain excess pay has been given to him by mistake and therefore, ordered for recovery. Accordingly, a sum of Rs.19,132/- came to be recovered. Admittedly, such a recovery was not made by neither giving prior notice to the petitioner nor conducting any enquiry. Such recovery is opposed to the settled principles of law and therefore, be in violation of principles of natural justice.

2. In this context, the petitioner had been consistently giving representations for refund of amount and ultimately, through the proceedings in Na.Ka.A5/3138/2010, dated 10.07.2012, the third respondent had sent a favourable proposal to the second respondent herein, for refund of the excess payment made. Since the proposal has not been acted upon till date, the present writ petition has been filed.



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3. The Hon'ble Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih (While Washer)* reported in (2015) 4 SCC 334 has held that when excess payment has been made owing to the mistake of the Department and recovery sought to be made for the excess payment made, which is more than five years before, such an action is impermissible in law.

4. In the instant case, for the excess payment made in the year 1992, the recovery was ordered in the year 2003, which is opposed to the settled principles of law cited above. As such, the petitioner herein would be entitled for refund of the amount recovered. Since the recovery itself is illegal and the petitioner has been repeatedly requesting the respondents for refund of the amount, the petitioner would also be entitled for interest on such refund.

5. In the light of the above findings, there shall be a direction to the second respondent herein to forthwith pass orders refunding a sum of Rs.19,132/- together with 6% interest from the date of recovery till the date of actual payment. Such orders shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this order.



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6. This Writ Petition stands allowed accordingly. No costs.

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M.S.RAMESH, J.

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