



W.P.(MD).No.7428 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 27.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.(MD).No.7428 of 2018

and

W.M.P.(MD).Nos.7105 and 13547 of 2018 and 16055 of 2021

C.Rajamani

...Petitioner

Vs

1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Municipal Administration,
Ezhilagam,
Chepauk,
Chennai – 600 005.

3.The Director of Local Fund Audit Department,
Kuralagam,
Chennai – 600 004.

4.The Commissioner,
Thoothukudi Corporation,
Thoothukudi.

...Respondents



W.P.(MD).No.7428 of 2018

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned orders Na.Ka.5171/2014/C2, dated 09.08.2014 and No.32548/PR7/2014 dated 06.02.2015 passed by the third and fourth respondents respectively and quash both and consequently directing the fourth respondent to refund the deducted amount of Rs.7,06,247/- to the petitioner.

For Petitioner : Mr.R.Murugappan

For R-1 to R-3 : Mr.M.Siddharthan,
Additional Government Pleader.

For R-4 : Mr.S.Shaji Bino,
Standingn Counsel.

ORDER

Heard the learned counsel for the petitioner, learned Additional Government Pleader for the respondents 1 to 3 and the learned Standing Counsel appearing for the fourth respondent.

2. The petitioner herein was permitted to retire from service on 31.03.2006. During his service, he was placed under suspension and was also paid the corresponding subsistence allowance.



W.P.(MD).No.7428 of 2018

WEB COPY

3. When the first respondent herein had earlier passed an order in G.O.(P).No.63 dated 17.02.2014, whereby, the punishment was imposed to recover a sum of Rs.2,000/- from the monthly pension for a period of three years, this Court vide order dated 13.11.2019 in W.P.(MD).No. 15409 of 2014 had quashed the order on the ground that the Commissioner of Tuticorin Corporation alone is the competent authority to pass an order. However, liberty was granted to the Commissioner of Corporation to proceed further against the petitioner in this regard. It is in this background, the Commissioner had now passed the impugned order dated 09.08.2014, directing for recovery of sum of Rs.6,39,365/- from the petitioner's monthly pension. This order of recovery is put under challenge in this present Writ Petition.

4. Admittedly, the alleged wrongful payment of the subsistence allowance has been made by the third respondent herein and no fault in this regard has been attributed on the petitioner. Moreover, the alleged excess payment relates to the year 2002. The Hon'ble Supreme Court in the case of *State of Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334*, has held that the recovery for the wrongful payment



W.P.(MD).No.7428 of 2018

made by the Department from the pensioner is impermissible in law. It is further held therein that when such recovery relates to an incident, which is five years prior to the date of recovery, is also not permissible.

5. In the instant case, the petitioner herein is a pensioner and the impugned recovery order relates to the incident that occurred in the year 2002, which is more than five years. On these two grounds, the recovery is impermissible in view of the law laid down by the Hon'ble Supreme Court in the *Rafiq Masih (White Washer)* case as stated supra.

6. In the light of the aforesaid judgment of the Hon'ble Supreme Court, the impugned orders Na.Ka.5171/2014/C2, dated 09.08.2014 and No.32548/PR7/2014 dated 06.02.2015 passed by the third and fourth respondents respectively are quashed. Consequently, there shall be a direction to the fourth respondent herein to forthwith refund the entire amount recovered from the petitioner, pursuant to the impugned order, dated 09.08.2014, within a period of four (4) weeks from the date of receipt of a copy of this order.



W.P.(MD).No.7428 of 2018

WEB COPY

6. With the above direction, the Writ Petition stands allowed.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.06.2022

Index: Yes/No

Speaking order/Non-speaking order

Nsr/TM

To

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai – 600 009.

2. The Commissioner of Municipal Administration,
Ezhilagam,
Chepauk, Chennai – 600 005.

3. The Director of Local Fund Audit Department,
Kuralagam,
Chennai – 600 004.

4. The Commissioner,
Thoothukudi Corporation,
Thoothukudi.



WEB COPY



W.P.(MD).No.7428 of 2018

M.S.RAMESH,J.

Nsr/TM

W.P.(MD).No.7428 of 2018

27.06.2022