



W.P.No.18882 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.18882 of 2011
and M.P.Nos. 1&2 of 2011

P.Gurumurthy

... Petitioner

Vs

1.The State of Tamil Nadu, Rep., by
its Secretary to Government,
School Education (G2) Department,
Fort St., George, Chennai – 600 009.

2.The Director of Elementary Education,
D.P.I., College Road,
Chennai – 600 006.

3.The Assistant Elementary Educational Officer,
Kuttalam Union,
Nagapattinam District.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the impugned orders of the third respondent in Na.Ka.No.2117/A1/2010, dated 11.10.2010 issued on the order of recovery on pension paid and quash the same.

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For Petitioner : No Appearance

For Respondents : Mr.S.Ravichandran AGP for RR1 to 3

ORDER

The Writ Petition had been filed challenging the order of recovery passed against the petitioner.

2. Heard Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents and no representation on the side of the petitioner.

3. The petitioner was working as a Headmaster at the Government Primary School, Velamurinthanpettai, Nagapattinam District and he was superannuated as early as on 31.05.2005. He had also been paid arrears as per Government Orders in G.O.Ms.No.207, School Education Department, dated 30.09.2008, however, the same was sought to be recovered from the petitioner by the impugned

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proceedings dated 11.10.2010. Challenging the same, the present Writ Petition has been preferred.

4. It is pertinent to note that the Hon'ble Supreme Court in a judgment in the case of ***State of Punjab & Ors., vs. Rafiq Masih (White Washer) & Ors.***, reported in ***(2015) 4 SCC 334***, holding where the recovery of money paid to a Government servant is impermissible.

The relevant paragraph is extracted hereunder:-

“ 18. 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).

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



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(iii) Recovery from the 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."

5. The learned Additional Government Pleader appearing for the respondents would submit that the Government had issued G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018, by taking into consideration the judgment of the Hon'ble Apex Court stated supra, as to the mode in which the recovery could be effected from a Government servant. He had also relied upon a judgment of this Court in W.P.No.27247 of 2010, dated 23.12.2021, in a similar circumstances and contended that the Government shall be permitted to



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serve a show cause notice on the Government servant/petitioner and after affording an opportunity of hearing, the same would be permitted to be recovered from the Government servant/petitioner. He would contend that if such liberty is not granted to the respondent, the government servant/petitioner would unjustly unreached itself.

6. I have considered the submissions made by the learned Additional Government Pleader for the respondents and perused the materials placed on record.

7. From the portion of the extracted order of the Hon'ble Apex Court in the case of **White Washer** stated supra, it could be seen that it had categorically laid down a law that where the recoveries would be impermissible in law. Clause (ii) of the paragraph 18 extracted supra had clearly laid down that the recovery could not be made from a retired employees of payments that had been mistakenly made by the employer.

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8. In the present case by way of a Government Order, the Government had paid money by way of arrears to the petitioner that too after his superannuation. Such payments could not be recovered in view of the law laid down by the Hon'ble Apex Court in the judgment state supra. Therefore, I am of the view that the impugned order of recovery is liable to be set aside and is accordingly set aside.

9. In fine, the Writ Petition is allowed and the impugned order is set aside. However there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

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