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W.P.No.10467 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.10467 of 2022
and WMP Nos.10161 and 10163 of 2022

M.Sathyanarayanan

...Petitioner

Vs

1. The Government of Tamil Nadu
Represented by its Secretary,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai.
2. The Directorate of Local Fund Audit,
Nandanam, Chennai-600 035.
3. The Assistant Director,
The Directorate of Local Fund Audit,
Nandanam, Chennai-600 035.
4. The Commissioner,
Sathyamangalam Municipality,
Sathyamangalam, Erode District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order issued by the 3rd respondent in **நீ.மு.எண்.13411/MPV(1)/20** dated **22.09.2020** and **நீ.மு.எண்.18251/நீ.ஊ.ச(1)2021** dated **29.10.2021** and quash the same and consequently direct the 4th respondent to repay the recovered amount of



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Rs.1,82,782/- and restore the original fixation of 09.02.1999.

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For Petitioner : Mr.S.Saravanan
For Respondent : Mr.P.Baladhandayutham
Spl.Govt. Pleader
For R.1 to R.3
Mr.B.Anand
For R.4

ORDER

Through the impugned order, the third respondent herein had stated that the petitioner's pay scale in the promoted post of Sanitary Supervisor was wrongly fixed on 09.12.1998 as 2750-70-3800-75-4400 instead of 2650-65-3300-70-4000. The error seems to be due to wrong application of V and VI Pay Commission. The respondents have also recovered a sum of Rs.1,82,782/-.

2. The Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***, has categorically held that recovery from a retired employee, particularly when the mistake of excess payment was on the part of the employer, is impermissible in law. The relevant portion of the order reads as follows:-

“18. It is not possible to postulate all



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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



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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.”

3. Admittedly, the petitioner herein had retired from service on 30.06.2020 and he is receiving pension. As such, recovery may be impermissible in view of the law laid down by the Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***. However, since objections have been raised with regard to the revision of the pay scale in the post of Sanitary Supervisor, no interference is required in such revision.

4. In view of the above observations, there shall be a direction to the respondents herein to forthwith refund the amount of Rs.1,82,782/- together with interest at the rate of 12% per annum (compounded annually), to the petitioner, from the date of recovery till the date of actual payment. The respondents shall endeavour to pass such orders of refund, atleast within a period of four (4) weeks from the date of receipt of a copy of this order.



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5. The Writ Petition stands partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes/No

Speaking order/Non-speaking order
sr

To

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M.S.RAMESH,J.

Sr

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