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W.P.No.37064 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.37064 of 2016
and W.M.P.No.31864 of 2016

A.Dhandapani

... Petitioner

Vs.

1. The Principal Secretary to Government,
Finance Department,
Fort St.George,
Chennai-9.
2. The Principal Secretary to Government,
Public Works Department,
Fort St.George,
Chennai-9.
3. The Engineer in Chief and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-5.
4. The Assistant Executive Engineer,
PWD, Aliyar Basin Sub Division,
Pollachi-642 003.
5. The Accountant General (A&E),
Tamil Nadu Circle,
361, Anna Salai, Teynampet, Chennai-18

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the 4th respondent herein in Proceeding No.54 M/2016 dated 15.7.2016 re-fixing the petitioner's pay scales by reducing the same and consequently sending the impugned revised pension proposals to the fifth respondent herein as per Letter No.90 M/2016 dated 29.9.2016 and quash the same and consequently direct the respondents to confer all benefits with effect from 15.12.1984 with interest to the petitioner.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mr.T.Chezhiyan
AGP

For R.1 to R.4

Mr.V.Vijayashankar

For R.5

ORDER

The petitioner herein had retired from service as Irrigation Assistant on 30.06.2006. Through the Government letter dated 14.07.2011, the petitioner's pay was re-fixed. Thereafter, through Government letter dated 28.11.2014, the pay of Irrigation Assistant was moved to Selection Grade and Special Grade with effect from 01.06.1988 and accordingly, re-fixation was done on



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15.07.2016. In view of this re-fixation, the petitioner's pension was reduced to Rs.3,133/-. Challenging this proceedings of the fourth respondent, the present writ petition is filed.

2. 4. 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 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."*

3. In view of the law laid down by the Hon'ble Supreme Court in **White Washer's case (supra)** the respondents will not be in a position to recover any



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excess amount that has been paid. Further more, all the revisions, which the fourth respondent has carried out, have been admittedly done without any prior notice to the pensioner. As such, the consequential impugned order dated 29.09.2016 is in gross violation of principles of natural justice. On this ground also, the impugned order is liable to be struck down.

4. Accordingly, the impugned order dated 29.09.2016 is hereby quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

10.01.2023

Speaking/Non-speaking order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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To

1. The Principal Secretary to Government,
Finance Department,
Fort St.George,
Chennai-9.

2. The Principal Secretary to Government,

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Public Works Department,
Fort St.George, Chennai-9.



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M.S.RAMESH,J.

SR

3. The Engineer in Chief and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-5.
4. The Assistant Executive Engineer,
PWD, Aliyar Basin Sub Division,
Pollachi-642 003.
5. The Accountant General (A&E),
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