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W.P.No.37275 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.37275 of 2016 and WMP No.31976 of 2016

N.Bagavathsingh

... Petitioner

Vs.

1. The Managing Director,
Tamilnadu Water Supply & Drainage Board,
No.31, Kamarajar Salai, Chepauk,
Chennai-60 005.

2. The Executive Engineer,
Rural Water Supply Division,
Ganesh Nagar, Near Law College Hostel,
Opp Matuthavani Bus Terminal,
Madurai-625 007.

3. The Executive Engineer,
Project Division,
No.2/2, ASS Soundarapandian Road,
Virudhunagar-626 001.

4. The Executive Engineer,
Rural Water Supply Division,
Ex-Servicemen Building,
Collectorate Complex,
Ramnad-62303.

... 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 of the respondents of recovery orders vide in proceeding No.1384/Ko.E.Po.Sa/1985/A2/2013 dated 25.07.2013 issued by the 2nd respondent and the proceeding in No.3113-2/Ko.E.Po.Sa-1988/Va.Sa.Vu/2012 dated 31.01.2013 issued by the 3rd respondent and the proceeding in No.1792-1/Ko.E.Po.Sa.Pa.K2/2015 dated 04.09.2015 and quash the same and consequently direct the 1st respondent to release all the retiral and pensionary benefits of the petitioner and refund the amounts recovered from the petitioner so far and direct the respondent to pay interest for the delayed payments,

For Petitioner : Mr.P.Arumugavel

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

The petitioner herein, had retired from the services of the respondent Board on 31.12.2012 while serving as Assistant Executive Engineer. The second respondent, through 31.01.2013, 25.07.2013 and 04.09.2015 had passed three



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orders based on audit objection with regard to certain infirmities during his service period and ha sought for recovery of a sum of Rs.10,564/-; Rs.3,020/- and Rs.79,986/- respectively. These orders are put under challenge in this writ petition.

2. The impugned orders of recovery cannot be sustained on three predominant grounds. Firstly, the recovery is said to be made without conducting enquiry. Secondly, the order is in violation of principles of natural justice since no objection was called for from the petitioner prior to passing of the order and thirdly and most importantly the orders passed are opposite to the law laid down by the Hon'ble Supreme Court. 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



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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.”



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Admittedly, the recovery, which is sought to be made, is owing to certain alleged infirmities against the petitioner herein while he was serving as Assistant Executive Engineer in the years 1985, 1988 and 2000 and the petitioner had retired from service on 31.12.2012.

3. In view of the law laid down by the Hon'ble Supreme Court in *White Washer's case (supra)* and also by taking note of the fact that the order is in violation of the principles of natural justice, the action initiated by the respondents for recovering the amount, cannot be sustained. Since the entire proceedings is illegal, the respondents bound to repay the aforesaid amount, together with interest.

4. In the light of the above observations, the impugned orders No.1384/Ko.E.Po.Sa/1985/A2/2013 dated 25.07.2013 issued by the 2nd respondent and the proceeding in No.3113-2/Ko.E.Po.Sa-1988/Va.Sa.Vu/2012 dated 31.01.2013 issued by the 3rd respondent and the proceeding in No.1792-1/Ko.E.Po.Sa.Pa.K2/2015 dated 04.09.2015 are quashed. Consequently, there shall be a direction to the respondents to forthwith refund the amount of



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Rs.10,564/-; Rs.3,020/- and Rs.79,986/- 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.

5. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2023

Speaking/Non-speaking order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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To

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M.S.RAMESH,J.,

SR

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