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W.A.(MD) No.892 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.A.(MD) No.892 of 2020
and
C.M.P.(MD) No.4869 of 2020**

The Commissioner
Kodaikanal Municipality
Kodaikanal
Dindigul District

... Appellant

-vs-

- 1.R.Thirupathi
- 2.N.Kaliya Perumal
- 3.U.Nagaraj
- 4.K.Sounthar Rajan
- 5.P.S.Anthony Doss
- 6.S.Raja
- 7.P.Parthiban



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8.C.Rajasekar

9.A.Elangumaran

10.Leo Marsileno

11.C.Subramani

12.S.Sahayaraj

13.P.Shanmugavel

14.K.Velmurugan

15.N.Vadivel

16.M.Velmurugan

17.M.Uthaya Suriyan

18.P.Krishnamoorthy

19.K.Pommiappa Jaikanthan

20.S.N.Kasthuri Rengaraj

21.P.Harikrishnan

22.A.John Arokiya Doss

23.C.Pandi

24.Vijayakumar

25.R.Essikiammal

26.M.Tharsis



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27.A.Siva

28.M.Murugeshwari

29.The Additional Chief Secretary to Government
Municipal Administration & Water Supply Department
Chennai-600 009

30.The Principal Secretary to Government
Finance (Pay Cell) Department
Chennai-600 009

31.The Director of Municipal Administration
Chepauk, Chennai-600 009

32.The Director of Local Fund Audit
Chennai-600 108

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 24.02.2020, passed in W.P.(MD) No.11357 of 2015, on the file of this Court.

For Appellant : Mr.L.P.Maurya

For Respondents : Mr.S.C.Herold Singh for R1 to R24
Mr.S.P.Maharajan
Special Government Pleader for R29 to R32



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J U D G M E N T

[Judgment of the Court was made by S.M.SUBRAMANIAM, J.]

The appellant is the Commissioner of the Kodaikanal Municipality questioning the order passed in W.P.(MD) No.11357 of 2015, dated 24.02.2020, filed by the respondents 1 to 28 challenging the order of recovery issued by the appellant-Municipality and for a consequential direction to refund the amount already recovered within a time frame.

2. The learned Writ Court allowed the writ petition primarily on the ground that the excess payment made to the writ petitioners, who are Class-IV employees on account of wrong fixation of their salary and benefits cannot be recovered in the light of the decision of the Honourable Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334***. After giving relief from recovery to the writ petitioners, certain other consequential directions also been issued. The question which falls for consideration in this appeal is whether the decision in the case of ***Rafiq Masih (White Washer)*** (supra) can have an universal application to all cases of recovery made by the various Departments



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of the Government after having deducted that excess financial benefits which is not intended to be paid to the employee has been paid.

3. Learned counsel appearing for the respondents 1 to 24 / writ petitioners pointed out that the Government of Tamil Nadu has accepted the decision in the case of **Rafiq Masih (White Washer)** and issued G.O.Ms.No. 286, dated 28.08.2018. Further it is pointed out that the appellant-Municipality had contended that an undertaking has been given by the writ petitioners agreeing for recovery and such undertaking will not be binding and cannot be enforced and to support such preposition, reliance was placed on the decision of the Honourable Division Bench in the case of **Tamil Nadu Civil Supplies Corporation and another v. R.Ganesha Rao**, in W.A.No.207 of 2019, dated 24.01.2019.

4. Further it is pointed out that in the case of the **Executive Engineer, Public Works Department (Machinery Sub-Division) Chennai-5 and another v. K.Karuppaiah**, the Division Bench had applied the decision of **Rafiq Masih (White Washer)** and dismissed the appeal filed by the Department by judgment dated 12.03.2018 in W.A(MD).No.638 of 2012.



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Therefore, it is submitted that it will be most inequitable to effect recovery from Class-IV employees, especially, when the amount to be recovered is almost Rupees Two lakhs from each of the writ petitioners.

5. Upon hearing the learned counsel appearing for the appellant and going through the facts of the case before us, we find that the decision in **Rafiq Masih (White Washer)** or in the case of **Ganesha Rao** or **K.Karuppaiah** cannot be applied to the case of the writ petitioners. This is because of more than one reason. Firstly, the nature of undertaking given by the writ petitioners is after issuance of show cause notice for recovery and at that stage, the respondents having accepted the fact that unintended benefit was given to the writ petitioners, who are working in a non-technical post agreed for revision of the pay and benefits and sought for permission to effect recovery in convenient installments. Therefore, the nature of undertaking which was referred to and considered in the case of Rafiq Masih (White Washer) as well as in the case of **Ganesha Rao** is entirely different. This is so because, the respondents-writ petitioners rightly understood that the excess financial benefit which was accorded to them, cannot be accorded to them under law. The decision in the case of **K.Karuppaiah** also cannot be applied



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in the case on hand as it was the case where the Writ Court found that the order of recovery was in violation of principles of natural justice and the amount sought to be recovered was about Rs.20,000/- and therefore, the Division Bench held that the peculiar facts and circumstances of the case does not warrant interference of the order passed in the writ petition.

6. As rightly pointed out by the learned counsel appearing for the appellant, the Honourable Supreme Court had clarified the effect of the decision in **Rafiq Masih (White Washer)** in the case of **High Court of Punjab and Haryana and Others v. Jagdev Singh, 2016 (14) SCC 267**. In the said case, the writ petition filed by an employee was allowed by the High Court of Punjab and Haryana, wherein, a challenge was made to the orders of the State Accountant General for recovery of an excess payment to the salary. In the said case, the record of proceedings shows that the employee opted for revised pay scale and he furnished an undertaking to the effect that he will be liable to refund any excess payment made to him. The Honourable Supreme Court held that the undertaking is binding. Therefore, the decision in Ganesha Rao stands impliedly overruled.



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7. Further, the Court took note of the decision in **Rafiq Masih (White Washer)** and held that the principle enunciated in paragraph No.10 of the judgment in **Rafiq Masih (White Washer)** cannot be applied to the situation, such as the case dealt with by the Honourable Supreme Court and undertaking will be binding on the employee. Therefore, the writ petitioners cannot rest the case solely based on the decision in the case of **Rafiq Masih (White Washer)**.

8. The following decisions would also support the stand taken by the appellant-Municipality in effecting the orders of recovery.

(i) The Hon'ble Supreme Court in the case of **Chandi Prasad Uniyaland Others v. State of Uttarakhand & Ors., (2012) 8 SCC 417**, in paragraph No.14, has held as follows:

"14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has



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been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment. "

(ii) The Hon'ble Supreme Court in the case of **Union Territory, Chandigarh and others v. Gurcharan Singh and another, (2014) 13 SCC 595**, in paragraph No.13, has held as follows:

"13.Though a submission had been made on behalf of the respondent that no amount should be recovered from the salary paid to the respondent, the said submission can not be accepted because if any



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amount had been paid due to mistake, the mistake must be rectified and the amount so paid in pursuance of the mistake must be recovered. It might also happen that the employer might have to pay some amount to the respondent as a result of some mistake and in such an event, even the appellant might have to pay to the respondent. Be that as it may, upon settlement of the account, whatever amount has to be paid to the respondent employee or to the appellant employer shall be paid and the account shall be adjusted accordingly."

(iii) A Division Bench of this Court in the case of ***The District Treasury Officer, (District Treasury), Perambalur vs. D.Susairaj and another, 2017 SCC Online Mad 35571***, in paragraph No.4, has held as follows:

"4.Our attention has been drawn to the decision in the White Washer's case wherein it has been held that such a recovery is impermissible. But, the case on hand, in its facts and circumstances, stand on a different footing for more than one reason. Firstly, when the mistake in calculation of the pension was found out during the month of August 2011 and recovery was started from October 2011 till June



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2013 based on the consent given by the writ petitioner, the writ petition has been filed in the year 2014. In the case relied upon by the writ petitioner, he had moved the court in time, but, in the case on hand, the writ petitioner has not moved this court in time and further, he had submitted himself for recovery of the amount paid in excess in monthly instalments as per the consent letter dated 28.11.2011 and subsequently, the entire amount as claimed in the audit objection also seems to have been recovered but, only thereafter, he has filed the writ petition for return of the recovered amount. Therefore, in the facts and circumstances of the case, the judgment cited *supra*, relied upon by the writ petitioner will not come to his rescue. In that view of the matter, we uphold the contentions of the learned Additional Government Pleader. "

(iv) A Division Bench of this Court in the case of ***T.M.Madav Yadav v. Principal Secretary to the Government, Government of Tamil Nadu, Fort St.George, Chennai and another, (2018) 6 MLJ 7163***, in paragraph Nos.23 to 25, has held as follows:

"23.It is to be pointed out that the ingredients of Sections 68 to 72 of the Indian Contract Act, 1872



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speak of the principles of 'Unjust Enrichment', as per decision Nallaya Gounder V. Ramaswami Gounder reported in (1958) 2 Mad LJ 86. The aspect of 'Unjust Enrichment' is rested on the principle that the concerned individual was enriched by reaping the benefits. Further, he should have been enriched at another's expense. Besides these, it would be unjust/unwise to permit him to retain the benefits.

24. One has to bear in mind the principle 'Nemo debet locupletari ex aliena jactura', i.e., no man should grow rich out of another person's loss. Further, a person who was unjustly enriched at the expense of another is required to make restitution to another [vide American Restatement of the Law of Restitution, Quasi-Contracts and Constructive Trusts, 1937, S I.]

25. In Law, 'Perpetration' of an error is no Legal Heroism'. If an error comes to light or the same is unearthed or brought to the fore, the same is to be rectified by the concerned authority. Viewed in that perspective, the recovery of 'overpayment' is very much necessitated and the same is in order. If recovery is not effected, it will be an 'Unjust Enrichment' resulting in Loss to the 'Exchequer'. Hence, the impugned proceedings of the 2nd Respondent/Office of the Accountant General,



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Chennai dated 11.01.2016 is free from any Legal flaw. Consequently, the Writ Petition fails."

(v) A Division Bench of this Court in the case of ***B.Usha v. Principal Labour Judge and others, 2019 SCC Online Mad 16765***, in paragraph No. 26, has held as follows:

"26. So also the above said provision is very clear that the ascertainable Government dues includes "Over payment of Pay and Allowances". Accordingly, the First Respondent is having the power to recover the "Over payment". Further, the said excess payment was recovered, only at the time of giving the Pension benefits to the Petitioner. Hence, it cannot be said that the recovery order was made after a long gap of time. More than that, as indicated by the Third Respondent, in the Service Register maintained by the officer of the employer, pertaining to the Petitioner, it was clearly held that the Petitioner gave an undertaking in respect to the recovery of over payment. After, giving assurance for recovering the over payment, now, the Petitioner filed the present Writ Petition and prayed for allowing the same, in order to waive the over payment, which was received nearly for the past 10 years. So also, the prayer sought for by the Petitioner in this



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Writ Petition is not based on any sound legal principle."

9. Considering the fact that the pay fixation was only in respect of persons manning technical posts with ITI qualification and the benefit was granted by the Government which was implemented by the appellant-Municipality, by virtue of which, the revised scale of pay was given notionally with effect from 01.01.2006 with monetary effect from 01.08.2010 and admittedly, the respondents-writ petitioners were not holding any technical posts, they were Tank Watchman, Tank Cleaner, Park Watchman and Bus stand Watchman etc., which are all admittedly non-technical posts and the respondents-writ petitioners cannot be heard to say that despite not possessing ITI qualification, they will be entitled to revised scale of pay. Therefore, even though the recovery may cause financial difficulties to the respondents-writ petitioners, taking note of the fact that more than fifty percent of the amount had already been recovered from the respondents-writ petitioners, that too in installments, as per the request made by the respondents-writ petitioners, we find that the orders of recovery ought not to have been interfered by the learned Writ Court.



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10. The Municipality is operating the public funds and tax-payers money. They discharging Constitutional obligation cast upon them and they are bound to render services to all citizens without any discrimination. Therefore, to state that the Municipality should absolve the loss can never be accepted. There can be no universal application of the principle that every wrong payment though deducted later can never be recovered from the person who enjoyed the unintended benefit, as rightly pointed out by the learned counsel appearing for the appellant that it would set a very bad precedent. Apart from that the Municipality can never recover the amount and it will be always shown as outstanding and this will have other cascading effect which would not be in public interest.

11. Thus, for all the above reasons, we are of the clear view that the learned Writ Court committed an error in interfering with the order of recovery.

12. In the result, the writ appeal is allowed and the writ petition are dismissed and the order impugned in the writ petition is held to be valid.



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The consequential revision of pay and pensionary benefits due to the retired employees are directed to be settled within a period of twelve weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[V.L.N., J.]

27.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.The Additional Chief Secretary to Government,
Municipal Administration & Water Supply Department,
Chennai-600 009.
- 2.The Principal Secretary to Government,
Finance (Pay Cell) Department,
Chennai-600 009.
- 3.The Director of Municipal Administration,
Chepauk, Chennai-600 009.
- 4.The Director of Local Fund Audit,
Chennai-600 108.



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