



WEB COPY



W.P.No.779 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.779 of 2023
and W.M.P.No.725 of 2023

C.D.Sivakumar

... Petitioner

Vs.

1.The Principal District Judge,
Coimbatore District Court Campus,
Coimbatore – 641 018.

2.The Assistant Registrar (Audit),
Internal Audit Wing,
Madras High Court,
Chennai – 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records relating to the recovery proceedings in B.No.201/2022 dated 13.12.2022 passed by the 1st respondent and quash the same.

For Petitioner

: Mr.V.Sivakumar



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For Respondents

: Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

(Order of the Court was delivered by M.S.RAMESH, J.)

On the basis of the report of the Internal Audit Wing, it is claimed that the petitioner herein was not eligible for 5% personal pay for the post of Examiner with effect from 01.08.1992. Thereafter, a show cause notice was issued for recovery of the excess payment made under 5% personal pay head and consequently, the first respondent herein had derived the accumulated amount as Rs.2,59,755/- through the present impugned order dated 13.12.2022. This excess payment of Rs.2,59,755/- was directed to be recovered in 24 monthly installments from the petitioner. Challenging the same, the present Writ Petition has been filed.

2. The impugned order of recovery is liable to be set aside on the sole ground that the order of recovery itself is against the well laid down



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principles of the Hon'ble Supreme Court in the case of '*State of Punjab Vs. Rafiq Masih (White Washer)*' reported in '*(2015) 4 SCC 334*'. In the aforesaid decision, it was held that the excess payment made to a Government employee, owing to the mistake of the concerned Department, as well as any excess payment made over a period of 5 years to the contemplated action of recovery, is impermissible in law.

3. In the instant case, admittedly, the payment of 5% personal pay for the post of Examiner with effect from 01.08.1992, is more than 5 years and such a payment was also owing to the mistake on the part of the Department. By applying the principle laid down in *White Washer's case (supra)*, the order of recovery itself cannot be sustained. This apart, the post of Examiner would fall under the category of Group D and recovery of any excess payment of a Group D employee has also been held to be impermissible in the same decision of the Hon'ble Supreme Court.

4. Accordingly, the impugned order passed in Progs.B.No.201/2022, dated 13.12.2022 by the first respondent, is hereby



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quashed and the Writ Petition stands allowed. In case, any recovery has been made pursuant to the impugned order, the same shall be forthwith refunded to the petitioner herein, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

[M.S.R., J]

[S.M., J]

20.03.2024

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No

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1.The Principal District Judge,
Coimbatore District Court Campus,
Coimbatore – 641 018.

2.The Assistant Registrar (Audit),
Internal Audit Wing,
Madras High Court,
Chennai – 104.

3.The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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