



Writ Petition No.2191 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.2191 of 2024
and W.M.P.No.2380 of 2024**

The Superintendent of Post Offices,
Ramanathapuram Division,
Ramanathapuram – 623 501.

... Petitioner

Vs

1.R.Nallathambi

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the 2nd respondent in O.A.No.284 of 2023 dated 28.03.2023 and quash the same and pass further orders.

For Petitioner : Mr.S.Diwakar

For R1 : Mr.R.Malaichamy



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ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

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This Writ Petition has been filed challenging the order of the Central

Administrative Tribunal, wherein, the order of recovery had been set aside.

2. Heard Mr.S.Diwakar, learned counsel for the petitioner, Mr.R.Malaichamy, learned counsel for the 1st respondent.

3. Mr.S.Diwakar, learned counsel for the petitioner would submit that the MACP which had been granted to the petitioner had been wrongly granted to him and therefore, the same was sought to be recalled. In view of the said recalling of the order, the 1st respondent's pay would have to be revised and accordingly, the same had been revised. As a consequence of that, the excess amount paid to the 1st respondent/ petitioner was only sought to be recovered without considering the same, the Hon'ble Tribunal had without applying the principles of white washers case had set aside the order of recovery. He would submit that the said principle cannot be applied to the present facts of the case, as the 1st respondent cannot be allowed to unjustly enrich himself.



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4. Countering his arguments, Mr.R.Malaichamy, learned counsel for the 1st respondent would submit that the 1st respondent had joined the services of the Postal Department initially in the year 1973 as an Extra Department Delivery Agent and thereafter, he qualified himself in the Departmental Examination for the promotion of Group D and was appointed in the Department as GDS on 07.03.1978 and thereafter, he held various positions and had attained age the of superannuation on 30.04.2013. He would submit that after his superannuation, the petitioner recovered a sum of Rs.1,85,104/- on the contention that he had been paid MACP wrongly.

5. He would submit that the said fixation of MACP was not at the instance of the 1st respondent and the same had been made on completing the required service for the MACP scheme. He would further submit that the said recovery was sought to be made after his date of retirement and therefore, the law laid down by the Hon'ble Apex Court in the **White Washers Case** would be wholly applicable to the facts and circumstances of this case. Therefore, there is no requirement to be interfered with the order



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passed by the Tribunal.

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6. We have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

7. It is an admitted case that the 1st respondent had retired from the Postal service on 30.04.2013 on attaining the age of superannuation. Only thereafter, the order of recovery had been served upon the 1st respondent and a sum of Rs.1,85,104/- had been with held by the petitioner. The Hon'ble Apex Court in the judgment rendered in ***State of Punjab and Others Vs Rafiq Masih & Others*** reported in (2015) 4 SCC 334 (White washer's case) paragraph 18 clause -2 had held that there can be no recovery made from a retired employee, even if such payment had been made by mistake at the hands of the employer. For better appreciation, the relevant paragraph is extracted hereunder:-

“ 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

8. In view of the aforesaid law laid down by the Hon'ble Apex Court, even if the 1st respondent was in service, no recovery would have been



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made on the payment made by the employer, even if by mistake, within one (1) year preceding his superannuation or after his superannuation. In this case, on the date of superannuation, the order has been passed and served upon the 1st respondent only on 30.04.2015. In such circumstances, the law laid down by the Hon'ble Apex Court in *White Washers case* would squarely be applicable to the facts of this case and that we do not find any error or infirmity in the order passed by the Tribunal which is impugned before us.

9. In fine, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (K.B., J.)
02.02.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

The Registrar,
Central Administrative Tribunal,
Chennai Bench.

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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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