



W.P.No.18428 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.07.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

W.P.No.18428 of 2016

and

W.M.P.Nos.16129 and 16130 of 2016

S.Arumugam

... Petitioner

-VS-

1.The Secretary to Government,
Municipal Administration and Water Supply,
Department, Fort St.George,
Chennai – 9.

2.The Director of Town Panchayat,
Chennai – 108.

3.The Executive Officer,
Thiruneermalai Town Panchayat,
Kancheepuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records on the file of the 3rd respondent in his Pro.Na.Ka.No.422/2013



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dated 23.11.2015 and quash the same insofar as the petitioner is concerned and direct the 3rd respondent to refund the subscription already made amount from the salary from 01.04.2003 to till date towards new Contribution Pension Scheme and also direct the 3rd respondent to give credit of Rs.55,300/- towards Provident Fund Account of the petitioner.

For petitioner : Mr.A.Baskaran

For R1 and R2 : Mr.V.Jeevagiridharan,
Additional Government Pleader

For R3 : No appearance

ORDER

The above Writ Petition has been filed challenging the recovery proceedings initiated by the 3rd respondent against the petitioner.

2. The petitioner was working as a sweeper in the Class IV category with the respondents. The 3rd respondent by his



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proceedings dated 14.12.2015, brought the petitioner under regular time scale of pay with effect from 06.09.2003 and also sanctioned increments for the year 2004 to 2015 and also paid arrears. The above proceedings was passed pursuant to the Government Order in G.O.Ms.No.142, Municipal Administration and Water Supply Department dated 23.09.2015. Pursuant to these orders, the petitioner was under the regular time scale of pay with effect from 06.09.2003 in time scale of pay of Rs.2550-55-2660-60-3200.

3. The learned counsel appearing for the petitioner would submit that pursuant to the above proceedings, the petitioner was paid the arrears of salary with effect from 06.09.2003. However, all of a sudden, the 3rd respondent by proceedings dated 23.11.2015, had recovered a sum of Rs.55,300/- from the petitioner's salary and ordered recovery of balance amount of Rs.57,084/- from his salary in 20 instalments.



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4. Challenging the same, the petitioner is before this Court.

5. It is the contention of the learned counsel for the petitioner that in the light of the judgment of Hon'ble Supreme Court in the case of *State of Punjab vs. Rafiq Masih* reported in *(2015) 4 SCC 334* popularly called as White Washer's Case, the recovery was per se illegal.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The entire case rests on whether the respondents have the authority to recover the money from the petitioner.

8. The petitioner has placed reliance on the White Washer's case, *supra*, where, the Hon'ble Supreme Court has set out the categories where the recovery by the employer would be



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impermissible in law in paragraph no.18 which would read 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



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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.”

Admittedly, the petitioner herein is a Class IV employee who would come within the paragraph 18 (i) aforesaid. Therefore, the recovery proceedings initiated by the 3rd respondent has to be necessarily set aside.

9. Consequently, the impugned order is quashed and the amount recovered, shall be refunded back to the petitioner and he shall be paid any arrears of salary, if payable.



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With the above directions, this Writ Petition is allowed.

Consequently, connected M.Ps. stand closed. No costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
ssa

To

1.The Secretary to Government,
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P.T.ASHA, J.,

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