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W.P. No.32123 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM :

**THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.32123 of 2015

and

M.P.No.1 of 2015

D.Sivan

... Petitioner

Vs.

1.The Government of Tamil Nadu
Represented by its Secretary Industrial Department
Secretariat, Chennai.

2.The Managing Director
Dharmapuri Co-Operative Sugar Mills Ltd.,
Dharmapuri.

3.The Director of Sugar
690, Anna Salai
Periyar EVR buildings
2nd Floor
Nandanam, Chennai – 600 035.

...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 Na.Ka.No.211/2003 C, dated 14.09.2015 on the file of the 2nd respondent and quash the same as illegal, incompetent and without jurisdiction.



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For Petitioner : Mr.Sunny sheen for
Ms.V.Srimathi
For Respondents : Mr.P.Ganesan
Additional Government Pleader.

ORDER

This writ petition has been filed questioning the proceedings Na.Ka.No.211/2003 C, dated 14.09.2015 issued by the 2nd respondent proposing to recover an amount of Rs.2,17,294/- from the petitioner on the ground that he was erroneously paid the encashment of earned leave for the 2nd time.

2. It is contended by the learned counsel for the petitioner that the petitioner has already retired from service, on attaining the age of superannuation as early as on 30.06.2014, but the impugned proceedings came to be issued only after a lapse of year since the date of his retirement from service. He also further contended that the said recovery is impermissible under law, in the light of the law laid down by the Hon'ble Apex Court in the case of ***State of Punjab and others Vs. Rafiq Mashi (White Washer)*** reported in (2015) 4 SCC 334.



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3. On the other hand, Mr.P.Ganesan, learned Additional Government Pleader appearing for the respondents, while reiterating the contentions raised in the counter affidavit, further contended that the petitioner has an efficacious alternative remedy available under Section 153 of Tamil Nadu Cooperative Societies Act, 1983, and instead of availing such remedy, the petitioner approached this Court by filing the present writ petition and therefore, this writ petition is not maintainable. He also further contended that in case, if this writ petition is allowed, the same stand would be taken by others, who are not paid the similar benefit of encashment of earned leave, and the respondents will be forced to pay such amounts without there being any legal entitlement for such amounts.

4. Whether the petitioner is really paid in excess of his entitlement or not, in the considered view of this Court, need not be decided in the present writ petition. As rightly contented by the learned counsel for the petitioner, the decision of the Honble Apex Court in the case of *State of Punjab and others Vs. Rafiq Mashfi (White Washer)* reported in (2015) 4 SCC 334, has



direct application to the case on hand. In the said decision, the Hon'ble Apex

Court at paragraph 18 held as under:

“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 hereinabove, 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.”

5. Admittedly, the petitioner retired from service on 30.06.2014



and the impugned proceedings came to be issued on 14.09.2015 i.e. after a lapse of year since the date of his retirement from service. In the light of the paragraph 18 (ii) of the judgment of the Hon'ble Apex Court in the case of *State of Punjab and others Vs. Rafiq Mashi (White Washer)* reported in (2015) 4 SCC 334, no amounts can be recovered from the person, who already retired from service or who are due to retire within one year of service.

6. In the circumstances, the petitioner has already retired from service, and it is only thereafter certain amounts are sought to be recovered on the ground that, he was paid excess amount and as such recovery is not permissible, in the light of the law laid down by the Hon'ble Apex Court as referred above, and therefore, the impugned order is liable to be quashed and the same is accordingly quashed.

7. Insofar as the contentions of the learned Additional Government Pleader on the ground that similar benefit would be claimed by other employees is concerned, it is made clear that the fact that the claim allowed in



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this writ petition will not automatically entitle the persons who are not extended such benefit of encashment of earned leave for the second time, as is extended to the petitioner herein, unless otherwise they are entitled for such benefit under law.

8. Accordingly, this writ petition is allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

19.11.2024

Index : Yes/No
Speaking Order : Yes/No
dpa



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To:

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MUMMINENI SUDHEER KUMAR,J.

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