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W.P.No.9788 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.9788 of 2019
and WMP.No.10397 of 2019

S.Gopinathan

... Petitioner

Vs.

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai 600 009.
2. The Director of Public Health and Preventive Medicine,
DMS Campus, Teynampet, Chennai 600 006.
3. The Block Medical Officer,
Government Primary Health Centre,
Palapatti, Namakkal District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records connected with the Government Letter issued in Letter No.14094/L1/2018-3 dated 25.10.2018 passed by the 1st respondent and proceedings issued in R.No.148/A1/2018 dated 23.03.2019 passed by the third respondent and quash the same and consequently direct the respondents to allow the petitioner to draw his salary as per the orders of the Government issued in GO.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009.



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For Petitioner : Mr.S.Ilamvaludhi
For Respondents : Mr.K.Tippu Sulthan

ORDER

This petition has been filed to quash the Government Letter No.14094/L1/2018-3 dated 25.10.2018 passed by the 1st respondent and the proceedings in R.No.148/A1/2018 dated 23.03.2019 passed by the third respondent and consequently direct the respondents to allow the petitioner to draw his salary as per the orders of the Government issued in GO.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and carefully perused the materials available on record.

3. In an identical matter in Writ Petition No.3316 of 2019, while considering the case of the similarly situated person, this Court allowed the said Writ Petition by its order dated 09.09.2024. The relevant paragraphs of



the said order are extracted hereunder:

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“3. The learned counsel for the petitioner submits that the Supreme Court held that recovery should not be made against the Government servant unless it is misappropriation, wrong information given to the Government by the government servant, event it is excess payment if it is not a fault on the government servant, it should not be recovered.

*4. In support of his contention, learned counsel for the petitioner relied on the judgment of Supreme Court in the case of **State of Punjab and others vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 344**. The relevant portion of the said judgment reads 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 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. *The learned Government Advocate appearing for the respondents basing on the averments made in the counter affidavit submits that whenever pay fixation is made, there will be a condition that consequent of fixation of pay, if any excess payment is found at a latter date, such excess amount will be recovered from the Government Servant concerned. As*



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such the Government has every right to recover the excess payment made to the petitioner by way of wrong fixation of pay and accordingly, sought to dismiss the Writ Petition.

....

*7. Admittedly, in the present case, the petitioner is a Group-C employee. As per the judgment of the Apex Court in **White Washer** case as stated supra, recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) would be impermissible in law. The said judgment clearly applicable to the petitioner's case.*

8. In view of the above, by following the judgment of the Supreme Court stated supra, this Writ Petition is allowed with the following directions:

i) The proceedings impugned in this writ petition is hereby set aside.

ii) The respondents are directed to refund the amount if any recovered from the petitioner within a period of four weeks from the date of receipt of a copy of this order.

No costs.

Consequently, connected miscellaneous petitions are closed."

4. In the considered opinion of this Court, the order stated supra,



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which was passed following the Apex Court Judgment in ***White Washer***, is squarely applicable to the present case.

5. In view of the above, this Writ Petition is allowed with the following directions:

- i) The proceedings impugned in this writ petition are hereby set aside.
- ii) The respondents are directed to refund the amount if any recovered from the petitioner within a period of four weeks from the date of receipt of a copy of this order.

No costs.

Consequently, connected miscellaneous petition is closed.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs



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