



WEB COPY

W.P.No.20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.20029 of 2021

Umapathy

... Petitioner

Vs.

1. The Director General of Police,
Office of the Director General of Police,
Chennai – 600 004.

2. The Joint Commissioner of Police,
St. Thomas Mount South Zone,
St. Thomas Mount, Chennai – 600 016.

3. The Accountant General,
Accountant General (Account & Entitlements),
Tamil Nadu, No.361, Anna Salai,
Teyanmpet, Chennai – 18.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in connection with Memo dated 30.07.2021 in Na.Ka.No.Rtd/South/115/36365/2019 issued by the second respondent and consequently quash the same.

For Petitioner
For Respondent

: Mr.T.Arul
: Mr.M.Murali, Government Advocate

ORDER

The petitioner herein served as Sub-Inspector of Police (Crime) and retired from



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service on 29.02.2020, after completing 34 years of service. Accordingly, the terminal benefits of the petitioner were also settled including pension. Thereafter, through proceedings bearing தெ.ம.ஆணை.எண்.448/2021 dated 17.05.2021, the pay of the petitioner was revised and accordingly re-fixed, thereby reducing the pay of the petitioner. The petitioner has not challenged the said proceedings. However, consequent upon the revision of pay of the petitioner through proceedings dated 17.05.2021, an amount of Rs.55,700/- is proposed to be recovered through impugned proceedings bearing ந.க.எண்.ஓய்வு(தெ)/115/36365/2019 dated 30.07.2021 and the petitioner is required to show-cause as to why the said amounts should not be recovered from the pension amount payable to the petitioner. It is aggrieved by the said show-cause notice, the petitioner approached this Court by filing the present Writ Petition.

2. No counter-affidavit is filed by the respondents. Further, request is made for grant of time for filing counter. However, this Court having noticed that the legality of recovery that is sought to be effected from the petitioner is covered by a decision of the Hon'ble Apex Court in the case of "*State of Punjab and Others -vs- Rafiq Masih (White Washer)*" reported in 2015 (4) SCC 334 declined to grant any further time for filing counter.



3. From the above narrated fact situation, it is evident that the petitioner retired from service on 29.02.2020 and has been drawing his pension. At that stage, the pay of the petitioner was revised on noticing that the said pay was fixed erroneously in the years 2010 and 2011 and the excess amount stated to have been paid due to wrong fixation of pay is proposed to be recovered through impugned proceedings.

4. Hence, the only question that needs to be considered by this Court is whether the proposed recovery of amount of Rs.55,700/- can be permitted to be recovered i.e., after the petitioner was allowed to retire from service after attaining the age of superannuation. The Hon'ble Apex Court in the case of **Rafiq Masih (White Washer)** has considered the scope and ambit of recovery orders that can be passed by the State and summarized certain general principles. Paragraph No.18 of the said order reads 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



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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. From the above, it can be safely concluded that the proposed recovery of an amount of Rs.55,700/- from the petitioner is squarely falls within Clause(ii) of Paragraph No.18 of the decision of the Hon'ble Apex Court in the case of **Rafiq Masih (White Washer)**. The recovery from the retired employees, or from the employees who are due to retire within one year, of the order of recovery is held to be impermissible in law

6. In the instant case, as already noted above, the petitioner retired from service as early as on 29.02.2020 and it is more than a year, after retirement of petitioner from service, the impugned show-cause notice came to be issued to show-cause as to why an amount of Rs.55,700/- should not be recovered from the petitioner.



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7. In the light of the law laid down by the Hon'ble Apex Court, in the considered view of this Court, the proposed recovery is totally impermissible in law and accordingly, the impugned show-cause notice bearing ந.க.எண்.ஓய்வு(தெ)/115/36365/2019 dated 30.07.2021 is set aside.

8. Accordingly, the Writ Petition stands allowed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

25.06.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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MUMMINENI SUDHEER KUMAR, J.

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