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W.P.Nos.9296 of 2016 & 32121 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 16.12.2024**

CORAM

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

**W.P.No.9296 of 2016 & 32131 of 2022**

S.R.Ranganathan

... Petitioner in both W.Ps

Vs.

1.The Assistant Audit Officer (A.A.O)  
The Principal Accountant General (A&E)  
Chennai 600 018.

2.The Additional Treasury Officer  
Krishnagiri District.

.... Respondents in both W.Ps

**Prayer in W.P.No.9296 of 2016:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to order dated 02.03.2016 bearing Roc.No.3893/2015/B1 of the second respondent and quash the same.

**Prayer in W.P.No.32131 of 2022:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to order dated 02.03.2016 bearing No.Na.Ka.No.3893/2015/AA1 dated 16.11.2022 of the second respondent and quash the same.



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For Petitioner in  
both W.Ps

: Ms.T.Hemalatha

For Respondents in  
both W.Ps.,

: Mr.P.Ganesan  
Government Advocate.

### **COMMON ORDER**

The petitioner herein retired from service, as early as on 31.10.1993, on attaining the age of superannuation in the cadre of Special Thasildhar and thereafter, his terminal benefits were settled and his pension was fixed at Rs.10,350/-. While so, in the year 2015, an audit objection was raised pointing that the petitioner is entitled only for pension of Rs.8,548/- as per G.O.Ms.No.235, Finance Department, dated 01.06.2009, in the time scale of pay of Rs.9100-34800 + 5100 and accordingly, proceedings bearing Na.Ka.No.3893/2015/A4 dated 29.01.2015 was issued ordering for recovery of the excess amount of pension paid to the petitioner. It was aggrieved by the said order of recovery dated 29.01.2015, the petitioner approached this Court by filing W.P.No.34357 of 2015, and this Court, allowed the said writ petition, by an order dated 19.09.2017 following the decisions 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*, however, granted liberty to the respondents to fix the pension payable to the petitioner.



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2. It was thereafter, the respondents issued yet another proceedings bearing R.O.C.No.3893/2015/B1 dated 02.03.2016 requiring the petitioner to remit the alleged excess amount paid to the petitioner. It was aggrieved by the said proceedings dated 02.03.2016, the petitioner once again approached this Court by filing W.P.No.9296 of 2016, and this Court, passed an interim order staying the operation of the impugned order dated 02.03.2016 in W.M.P.No.8289 of 2016 by an order dated 14.03.2016. While the said writ petition was pending, the 2<sup>nd</sup> respondent herein, after putting the petitioner on notice, issued yet another proceedings bearing Na.Ka.No.3893/2015/A4, dated 16.11.2022, refixing the pay of the petitioner and also ordered for recovery of the excess amount of Rs.1,78,162/- from the petitioner in installments. It is aggrieved by the proceedings dated 16.11.2022, the petitioner once again approached this Court by filing W.P.No.32131 of 2022. This Court, having entertained the said writ petition passed an interim order staying the operation of the impugned order dated 16.11.2022 in W.M.P.No.31556 of 2022 by on order dated 13.11.2022.

3. The respondents filed counter affidavit along with vacate stay petition seeking vacation of the interim order passed by this Court.



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4. Heard Ms.T.Hemalatha, learned counsel for the petitioner and Mr.P.Ganesan, learned Additional Government Pleader for the respondents.

5. The learned counsel for the petitioner contended that the petitioner is not contesting insofar as refixing the pension of the petitioner is concerned, but the petitioner is contesting the impugned order only to the extent of ordering for recovery of amount of Rs.1,78,162/- from the pension that is payable to the petitioner, 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 Masih (White Washer)* reported in (2015) 4 SCC 334.

6. The law with regard to recovery of amounts from pensioners is settled in the case of *State of Punjab and others Vs Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334. In respect of the very same, this Court, having found that the petitioner falls within the parameter of the law laid down in the said case, quashed the orders of recovery that was passed by the respondents in the year 2015, while granting liberty to the respondents to refix the pension of the petitioner. The pension of the petitioner was refixed only through proceedings dated 16.11.2022 and once again the order of



recovery was passed for sum of Rs.1,78,162/-. In the teeth of the earlier orders passed by this Court in W.P.No.34357 of 2015 and the law laid down by 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***, the order of recovery from the pension that is payable to the petitioner cannot be sustained. The Hon'ble Apex Court in the said decision 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.”*



In the light of the above, the petitioner herein would squarely fall under clause (ii) of para 18.

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7. In the light of the above, the impugned order to the extent of ordering for recovery of amount of Rs.1,78,162/- cannot be sustained and the same is accordingly quashed to the extent of ordering for recovery is concerned. However, the orders issued through impugned order refixing the pension of the petitioner is concerned, the same is upheld. Consequently, the petitioner is entitled for the revised pension with effect from 16.11.2022 and in case, if any amounts are paid over and above the entitlement of the petitioner after 16.11.2022, such amounts can be recovered from the petitioner.

8. Accordingly, both the writ petitions are disposed of. The connected miscellaneous petitions, if any, shall stand closed. No costs.

**16.12.2024**

dpa

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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To

W.P.Nos.9296 of 2016 & 32121 of



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**MUMMINENI SUDHEER KUMAR, J.**

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