



W.P.No.25503 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on 07.11.2024	Order Pronounced on 20.11.2024
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CORAM

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE P.B.BALAJI**

**W.P.No.25503 of 2024
and W.M.P.No.27864 of 2024**

M.Karupannan

..Petitioner

Vs.

1.The Registrar General,
Madras High Court,
Chennai – 600 104.

2.The Subordinate Judge,
Subordinate Court,
Gobichettipalayam,
Erode District.

..Respondents

PRAYER: The Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the 2nd respondent under the Caption of Notice, dated 02.07.2024 and quash the same and consequently, direct the respondents to refund a sum of Rs.2,50,232/- which was already recovered from the petitioner within the time framed fixed by the Court.



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For Petitioner : Mr.C.Rajaguru

For Respondents : Mr.K.Elango

ORDER

(Order of the Court was made by P.B.BALAJI, J.)

The writ petitioner challenges the order passed by the second respondent dated 02.07.2024 and consequently seeks refund of a sum of Rs.2,50,232/- which has already been recovered from the writ petitioner.

2.We have heard Mr.C.Rajaguru, learned counsel for the writ petitioner and Mr.K.Elango, learned counsel for the respondents.

3.The learned counsel for the writ petitioner would submit that the petitioner was recruited by the Tamil Nadu Public Services Commission in the year 2009 and he was appointed as Junior Assistant in the Judicial Magistrate Court, Bhavani, on 24.07.2009. The petitioner was consequently promoted as Assistant in the year 2014 and as Grade II Assistant in the year 2015 and as Head Clerk in July 2017 and as Grade II Bench Clerk on 01.06.2018 and finally, he was promoted as Head Clerk on 01.01.2020 and



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was transferred and posted to the second respondent Court, namely Subordinate Court, Gobichettipalayam, Erode.

4.The learned counsel for the writ petitioner would submit that the internal auditing of the High Court found the pay scale of the petitioner being wrongly fixed as Rs.6690 + 2000 G.P instead of Rs.6430 + 2000 G.P for the period from 05.08.2009 to May 2021. The petitioner was called upon to offer his explanation in and by Official Memorandum dated 15.11.2021. The writ petitioner has expressed his inability to pay the huge amount of Rs.2,50,232/- and sought for withdrawal of the Official Memorandum dated 15.11.2021.

5.According to the learned counsel for the writ petitioner, without treating the said request of the writ petitioner, the second respondent has directed deduction of the amounts payable in monthly installments. Further, according to the learned counsel for the writ petitioner, the second respondent forced the writ petitioner to accept for such deduction of the total amount of Rs.2,50,232/- from the petitioner's salary in equal monthly installments. The impugned order came to be passed on 29.03.2022 directing deduction of Rs.12,512/- from the salary of the petitioner for twenty months commencing



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March 2022. The entire amount has been recovered from the petitioner and the petitioner has also retired from service on 30.04.2024. When the petitioner was eagerly awaiting reliefs of service cum retirement benefits, he was shocked to receive the impugned order dated 02.07.2024 claiming that the amount of Rs.1,28,265/- had been paid in excess than the petitioner's actual salary and only on payment of the said amount, the retirement amount would be released.

6.The learned counsel for the writ petitioner relied on the decision of the Hon'ble Supreme Court in *State of Punjab and Others Vs. Rafiq Masih (White Washer)*, reported in (2015) 4 SCC 334, where the Hon'ble Supreme Court has issued guidelines for effecting recovery from employees who have retired or on the verge of retirement. According to the writ petitioner, the said decision would squarely apply to the facts of the present case and therefore, prayed for the writ petitioner being allowed.

7.Per contra, Mr.K.Elango, learned counsel for the respondents would submit that the claim of the writ petitioner that he was forced to agree for payment of recovery of Rs.2,50,232/- in monthly installments is absolutely



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false and baseless and he would point out that the petitioner did not take any steps until the entire amount was recovered by way of twenty monthly installments and only after retirement, the petitioner has chosen to make false allegations.

8.The learned counsel for the respondents would further submit that insofar as the impugned order dated 02.07.2024 regarding the further excess amount of Rs.1,28,265/-, the writ petitioner was placed as in charge, Sheristadar of the Sub Court, Gobichettipalayam, Erode for the period of 14.07.2021 to 31.07.2022 and his duty obtaining only to preparation of office orders for re-fixing of salary which he failed to do. Therefore, it is not open to the petitioner to contend that excess salary paid to him was not because of any fault on his part. He would further submit that the decision of the Hon'ble Supreme Court in *Rafiq Masih (White Washer)'s case* referred herein supra would not apply to the facts of the present case, especially when the writ petitioner belongs to Group B service. He would therefore pray for dismissal of the writ petition.

9.We have carefully considered the submissions advanced by the



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learned counsel on either side and we have also gone through the records.

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10. Admittedly, insofar as the first recovery made to the tune of Rs.2,50,232/-, it appears that the same has already been deducted by way of 20 monthly installments at Rs.12,512/- per month commencing even March 2022 and is too late in the day, that too the petitioner having given a request letter to recover the amount in monthly installments, to now contend that it was forced upon him by the second respondent, his superior and Pay Officer, to give such letter. Therefore, we are unable to accept the contentions of the writ petitioner in this regard.

11. However, with regard to the impugned order of the second respondent dated 02.07.2024, it is only a notice calling upon the writ petitioner to pay the alleged excess salary of Rs.1,28,265/- and making it clear that unless the amount is paid, the service cum retirement benefits of the petitioner would not be released.

12. The Hon'ble Supreme Court in *White Washer's case* (State of



Punjab and Others Vs. Rafiq Masih reported in (2015) 4 SCC 334), has

carved out instances under which recovery cannot be made. The relevant portion of the said judgment is extracted hereunder for easy reference.

“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.”

13.The contention of the learned counsel for the respondents is that the writ petitioner being a Group B employee, he is not entitled to the consideration shown by the Hon'ble Supreme Court in the above said decision. However, we are unable to accept the said contention of the learned counsel for the respondents. Insofar as the recovery from employees belonging to Class III and Class IV (or Group C and Group D services), the



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Hon'ble Supreme Court ruled that there would be a total prohibition from making any recovery. However, no such prohibition is available in the case of Class I and Class II (Group A and Group B employees).

14. In our considered opinion, the second scenario set out by the Hon'ble Supreme Court, namely “recovery from retired employees or employees who due to retire within one year, of the order of recovery” would alone be applicable to the facts of the present case. Insofar as this category of persons, the Hon'ble Supreme Court has not restricted into only Group C or Group D service employees and it would apply uniformly to all employees, across the four Classes. Therefore, applying the said ratio of the Hon'ble Supreme Court and in view of the admitted position that the writ petitioner had retired from service on 30.04.2024, the impugned notice dated 02.07.2024 is clearly erroneous and contrary to the dictum of the Hon'ble Supreme Court in the *White Washer's case*.

15. For all the above reasons, the writ petitioner is entitled to partly succeed.



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16. In fine, the prayer seeking refund of Rs.2,50,232/- already recovered from the petitioner stands rejected and the impugned notice dated 02.07.2024 is hereby quashed and consequently, the respondents are directed to release the service cum retirement benefits payable to the writ petitioner, within a period of eight weeks from the date of receipt of a copy of this orders. There shall be no order as to costs. Connected Writ Miscellaneous Petition is closed.

(D.K.K,J.) & (P.B.B,J.)

20.11.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

1. The Registrar General,
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2. The Subordinate Judge,
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Gobichettipalayam,
Erode District.



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