



WEB COPY



W.P.No.7519 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.08.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.7519 of 2017

and

CMP.Nos.27459, 27460 & 8205 of 2017

Y.Kulandhairaj

...Petitioner

Vs.

1.The Additional Director General of Prison,
Chennai-600 008.

2.The Superintendent of Prisons,
Central Prison, Coimbatore District.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the proceedings of the 2nd respondent issued in his proceedings No. 6063/Po-1/2013-2 dated 25.07.2014, proceedings No.19473/Po-5/12 dated 25.07.2016 and in his proceedings No.19473/Po-5/12 dated 24.08.2016 issued against the petitioner.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents : Mr.R.Kumaravel,

Additional Government Pleader



W.P.No.7519 of 2011

ORDER

The writ petition is filed challenging the 2nd respondents proceedings dated 25.07.2014, 25.07.2016 and 24.08.2016 against the petitioner.

2. The petitioner joined the Prison service on 17.06.1975 as Grade II warder and thereafter promoted as Grade I warder and Chief Head warder on 01.10.1998 and 08.08.2003 respectively. The petitioner was transferred to Central Prison in 2008 and he was retired from service on 31.05.2010. Four years after retirement of the petitioner, the 2nd respondent passed recovery order dated 25.07.2014 for recovery of Rs.70,992/- for excess payment of wrong fixation of pay. The petitioner filed the present writ petition challenging the order for recovery of the aforesaid amount.

3. The learned counsel for the petitioner submitted that the petitioner retired as Chief Head warder which is Group 'C' post. The learned counsel relying on the judgment of the Hon'ble Supreme Court in the case of State of Punjab and others, etc. Vs. Rafiq Masih (White Washer) reported in *2015 (5) CTC 455*, submitted that in view of the law laidown by the Hon'ble Supreme Court in the aforesaid judgment, the recovery order was unsustainable.



W.P.No.7519 of 2011

4. The learned counsel for the respondent does not dispute that the petitioner retired in Group 'C' post.

5. In my view, the aforesaid judgment of the Hon'ble Supreme Court squarely applies to the present case. The Hon'ble Supreme Court in the aforesaid judgment after discussing the entire case law on the subject of recovery post retirement summarised few situations where recovery from the employees would be impermissible in law. In the summary one of the situations cited by the Hon'ble Supreme Court where recovery would be impermissible related to employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

In view of the judgment of the Hon'ble Supreme Court, the writ petition is allowed. The impugned order dated 25.07.2014 is set aside. No costs. Consequently connected WMP's are closed.

08.08.2024

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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W.P.No.7519 of 2017

N.MALA,J.

dsn

To

1.The Additional Director General of Prison,
Chennai-600 008.

2.The Superintendent of Prisons,
Central Prison, Coimbatore District.

W.P.No.7519 of 2017

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