



W.P.No.33084 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on
14.11.2024

Order Pronounced on
20.11.2024

CORAM

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

W.P.No.33084 of 2024

A.S.Perarulmani

..Petitioner

Vs.

- 1.The Registrar General,
High Court of Madras,
High Court Campus,
Chennai – 600 104.
- 2.The Principal Secretary to Government,
Home (Court V) Department,
Fort. St.George, Chennai – 9.
- 3.The Principal District Judge,
Dharmapuri.
- 4.The Principal Accountant General (A&E),
AG's Office (Audit) Complex,
Anna Salai, Roast Revor Garden,
Teynampet, Chennai – 600 018.



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5.The District Treasury Officer,
Dharmapuri.

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6.The Judge,
Family Court (In charge),
Dharmapuri 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 record of the 6th respondent in connection with show cause notice dated 26.05.2022 and quash the same and consequently direct the 5th respondent to repay the recover amount of Rs.45,394/- to the petitioner.

For Petitioner : Mr.G.Selvaraj

For Respondents
RR1, 3 & 6 : Mr.M.T.Arunan

R4 : Mr.V.Vijayshankar
Senior Counsel

RR2 & 5 : Mr.M.Venkateshwaran
Special Government Pleader

ORDER

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

The Writ Petitioner working as a Junior Assistant in the Principal



District Court, Dharmapuri, aggrieved by the recovery order of the third respondent seeking to recover Rs.45,394/- being alleged excess pay and allowance made to the writ petitioner, has filed the above Writ Petition, before us.

2. We have heard Mr.G.Selvaraj, learned counsel for the Writ Petitioner and Mr.M.T.Arunan, learned counsel for the respondents 1, 3 and 6 and Mr.V.Vijayshankar, learned Standing Counsel for the fourth respondent and Mr.M.Venkateshwaran, learned Special Government Pleader for respondent 2 and 5.

3. The grievance of the Writ Petitioner is that in and by a letter dated 09.05.2022, the learned District Family Judge, Dharmapuri had called upon the petitioner to showcause why deduction should not be effected from his salary and that despite suitable reply given by the petitioner on 04.06.2022, and the petitioner also having paid the entire amount on 08.06.2022, a sum of Rs.1,21,925/- was directed to be recovered from the writ petitioner by deducting a sum of Rs.14,476/- every months for 60 months commencing October 2022 onwards.



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4. Challenging the said impugned proceedings of the third respondent, the writ petitioner placing reliance on the Hon'ble Supreme Court in *Syed Abdul Quadir Vs State of Bihar*, reported in (2009) 3 SCC 475, contended that when the excess amount paid to the employee is not on the basis of any misrepresentation on the part of the employee or when it was paid applying a wrong calculation, then such amount cannot be recovered from the employee. The learned counsel for the appellant also places reliance on the decision of the Division Bench of this Court in *K.Laksmanan Vs. The Principal District Judge, District Court Campus, Krishnagiri and another* dated 02.12.2019 in *W.P. No.16621 of 2017* and *P.Ponnusamy Vs. Registrar General, Madras High Court, etc.,* dated 04.03.2024 in *W.P. Nos. 8952 of 2023 etc.,* where this Court has held that when there is no false representation or undertaking given by the employee concerned, then they cannot be found fault with for any wrong fixation and this Court applying the ratio laid down by the Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih (White Washer)*, reported in (2015) 4 SCC 334, held that no recovery could be made on the ground of any excess salary paid to such employees.

5. Applying the ratio laid down by the Hon'ble Supreme Court in



Whitewasher's case as well as *Abdul Quadir's* cases (referred herein supra) and Division Bench decisions of this Court to the facts of the present case, we find that initially the petitioner was called upon to pay a sum of Rs.45,394/-. Admittedly, the petitioner has voluntarily paid the said amount and in such circumstances, we are unable to countenance the submissions of the learned counsel for the appellant that he is entitled to refund of the said amount which has been voluntarily paid by him.

6. Applying the ratio, we find from the facts of the present case that the petitioner is a Class IV employee and for no fault or mis-representation on his part, the recovery is sought to be made, admittedly, on the ground of wrong fixation. Therefore, the petitioner is entitled to relief and consequently, the show cause notice dated 26.05.2022 is liable to be set aside. However, the amounts already paid to the petitioner voluntarily cannot be refunded to the petitioner as sought for in the writ petition.

7. In view of the facts that the petitioner has voluntarily deposited a sum of Rs.45,394/- and has not chosen to challenge the impugned proceedings pursuant to the show cause notice dated 26.05.2022. On the ground of delay and laches, we do not deem it fit and proper to extend the



ratio laid by this Court and as well as the Hon'ble Supreme Court in various cases held in supra. In fact, the entire amount would have already been recovered by now and even according to the petitioner as against his monthly salary of Rs 40,800/- with a sum of Rs.20,033/- being deducted every month. Despite the order being passed way back on 13.10.2022, the petitioner has chosen to sleep over the matter and filed the present writ petition only in October 2024, after a lapse of more than 3 years.

8. However, we are unable to extend the concession shown by Hon'ble Supreme Court as well as the Division Bench of this Court to the petitioner who has voluntarily chosen to pay the entire amount as early as on 08.06.2022, soon after the show cause notice issued by the 6th respondent. Having voluntarily paid the amounts that too, more than two and half years back, it is not open to the petitioner to belatedly, challenge the said show cause notice. We therefore, find no merit in the contentions of the writ petitioner and consequently the writ petition is liable to be dismissed.



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9. In fine, the writ petition is dismissed. However, there is no order as to costs.

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

20.11.2024

Index : Yes/No

Speaking Order/Non-Speaking Order
rkp

To

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