



WP(MD). No.13696 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 26/06/2024

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The Hon`ble Ms.Justice R.N.MANJULA

WP(MD). No.13696 of 2024
and WMP(MD) No.12060 of 2024

Krishnaveni.G

... Petitioner

Vs

1. The Revenue Divisional Officer,
Sivakasi Division, Virudhunagar District..

2. The Treasury Officer,
District Treasury, Virudhunagar..

3. The Assistant Treasury Officer,
Sivakasi,
Virudhunagar District..

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified mandamus, calling for the records of the 1st respondent i.e., the Revenue Divisional Officer, Sivakasi in his proceedings Na.Ka.A3/5876/2023-15 dated 25.05.2024 and quash the same and consequently direct the 3rd respondent i.e., the Assistant Treasury Officer, Sivakasi not to effect any recovery.



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For Petitioner : Mr.S Visvalingam
For Respondent : Mr.N.Ramesh Arumugam

ORDER

Heard Mr.S.Visvalingam, learned counsel appearing for the petitioner and Mr.M.Ramesh, learned Government Advocate appearing for the respondents.

2. The petitioner has filed the writ petition challenging the impugned order of the 1st respondent dated 25.05.2024 and consequently direct the third respondent not to effect any recovery.

3. The petitioner's husband, who worked as Village Administrative Officer in Virudhunagar District, had peacefully retired on attaining the age of superannuation on 31.01.2015. Subsequently, he died on 10.08.2023. The petitioner is the family pensioner. While so, the house rent allowance was revised from 01.01.1996 as per the Government Orders in G.O.Ms.No.218, Finance (Allowances) Department, dated 23.03.1993 and G.O.Ms.No.162, Finance (Pay Cell) Department, dated



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13.04.1998 and as per the clarification issued in Government Letter No. 30027/PC-I/1998-1 dated 28.04.1998 and the petitioner's husband has been sanctioned house rent allowance accordingly. However, the first respondent vide the impugned orders dated 25.05.2024 ordered to recover the alleged excess payment of house rent allowance of Rs.57,792/- from the pension of the petitioner for the period from June 2024 onwards at the rate of Rs.2,000/- per months. Challenging the said order of recovery, the present petition is filed.

4. Mr.S.Visvalingam, learned counsel appearing for the petitioner, submitted that the impugned order has been passed without even issuing notice or giving opportunity to the petitioner. It is his submission that for the petitioner's husband, who had retired as early as in the year 2015, the impugned order of recovery has been passed in the year 2024.

5. The Hon'ble Supreme Court of India in the case of *State of Punjab and others vs. Rafiq Masih (White Washer)* reported in AIR 2015 SC 696 had held that the recovery of excess payment wrongly made by the Department to the retired employees is impermissible in law. The



relevant paragraphs are extracted hereunder.

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"12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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



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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.””

6. In the case on hand, the petitioner's husband was a retired person and therefore, he falls under Class II category. In such circumstances, the '**White Washer**' case cited above is squarely applicable to the facts of the present case.

7. Furthermore, the hardship caused to the employees due to the recovery would be harsher than the employer's right to recover. The employees are not at fault and they are in noway responsible for receiving the excess payment. The employees have not suppressed any material facts and induced the employer to grant him excess pay. It is the employer, who is at fault and who has been sleeping for many years



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without fixing his own mistake and has issued order for recovery. As the impugned recovery is impermissible as per the settled legal position referred above, the order is liable to be set aside.

8. In the result, the writ petition is **allowed** and the order of the first respondent in Na.Ka.A3/5876/2023-15 dated 25.05.2024 is quashed and the third respondent is directed not to effect any recovery. No costs. Consequently, connected Miscellaneous Petition is closed.

26.06.2024

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TO

1. The Revenue Divisional Officer,
Sivakasi Division,
Virudhunagar District..

2. The Treasury Officer,
District Treasury, Virudhunagar..

3. The Assistant Treasury Officer,
Sivakasi,
Virudhunagar District..

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R.N.MANJULA,J

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