WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.13494 of 2024
and WMP(MD) No.11910 of 2024

K.Seenikkalai

... Petitioner

Vs

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

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

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 records of the impugned order passed by the 1st Respondent i.e., the Revenue Divisional Officer, Sivakasi in Na.Ka.A3/5876/2023-9, dated 25.05.2024 and quash the same as illegal and consequently direct the 3rd Respondent i.e., the Assistant Treasury Officer, Sivakasi not to effect any recovery.

For Petitioner : Mr. M.K.Sachin Rahul

For Respondents : Mr.M.Lingadurai
Special Government Pleader

https://www.mhc.tn.gov.in/judis

WEB COPY

ORDER

Heard Mr.M.K.Sachin Rahul, learned counsel appearing for the petitioner, Mr.M.Lingadurai, learned Special Government Pleader appearing for respondents.

2.The petitioner has filed this writ petition challenging the proceedings of the 1st respondent i.e., the Revenue Divisional Officer, Sivakasi in Na.Ka.A3/5876/2023-9, dated 25.05.2024 and consequently to direct the 3rd Respondent i.e., the Assistant Treasury Officer, Sivakasi not to effect any recovery.

3. The petitioner was lastly working as a Village Administrative Officer and retired from service on 30.06.2010. The HRA from 01.01.1996 was revised as per G.O.No.218, Finance (Allowance) Department, dated 23.03.1993, G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998 and further clarification issued in Government Letter No.30027/PC-1/1998-1, dated 28.04.1998 the HRA was sanctioned to him. Without issuing any notice to the petitioner, on 25.05.2024 the first respondent has directed the third respondent to recover the alleged excess payment of HRA of Rs.57,752/- paid

https://www.mhc.tn.gov.in/judis

WEB COPY

to him from the month of June, 2024 in 28 monthly instalments at the rate of Rs.1,795/- per month. Challenging the same, the present petition is filed.

4. 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 Group-C and Group-D employees is impermissible in law. This Court, in similar circumstances, in *W.P.No.1122 of 2020 and batch dated 23.11.2023 [M.Santha vs. The Joint Director (Employment), O/o.Directorate of Employment and Training, Guindy, Chennai - 600 032 and batch] b*y invoking '***White Washer***' case has observed thus.

> *"15.Mr.J.Pooventhera Rajan, learned counsel for the petitioner cited the decision rendered in "White Washers" case to canvas his point that the stipulation made in White Washers case is applicable to the petitioners and even for the sake of argument, if the payment made to the petitioners are considered excess, it cannot be recovered. In paragraph 12 of the White Washers case the following summary has been given:*
>
> > *"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*

https://www.mhc.tn.gov.in/judis

WEB COPY

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 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."

16.No doubt, the Petitioner who are working as Junior Assistants would fall under Class IV employees and some of them had retired from service and the recovery is

https://www.mhc.tn.gov.in/judis

WEB COPY

sought to be made after five years. So the conditions (i) to (iii) are squarely applicable to facts of the case. However, in the case on hand, it is not excess payment but the payment due to be paid to the Petitioners, and hence it cannot even be considered as excess payment and hence no need to give the concession.

17.Because there is a conceivable difference between concession and entitlement. The 'entitlement' represents a right which can be exercised or claimed and the concession in a relaxation or liberty given by someone at his discretion, and hence the receiver cannot have any control or claim over concession. What is being enjoyed by the Petitioners are only entitlement derived from G.O. (Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012. Hence the impugned order issued for recovery of the payment already made and to stop making further payment is due to misinterpretation and misunderstanding of the scope of the above Government Order.

18.In view of the above stated reasons, the impugned orders in the respect Writ Petitions are set aside and these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."

https://www.mhc.tn.gov.in/judis

WEB COPY

5. In the case on hand, the petitioner is working as Village Administrative Officer in the respondent Department and therefore, he comes under Group-IV and hence he would come under the impermissibility point No. 1, laid down by the Hon'ble Supreme Court in the '*White Washer's*' case.

6. Furthermore, the hardship caused to the employees due to the recovery would be more harsh than the employer's right to recover. The employee is not at fault and he is in noway responsible for receiving the excess payment. The employee has not suppressed any material facts and induced the employer to grant him excess pay. It is the employer who is at fault and has been sleeping for five years without coming to fix his own mistake and issue an order of recovery. Hence, the impugned order for recovery is not maintainable and liable to be quashed.

7. In view of the above observations, the writ petition is allowed and the order of the first respondent / Revenue Divisional Officer, Sivakasi

https://www.mhc.tn.gov.in/judis

WEB COPY

in Na.Ka.A3/5876/2023-9, dated 25.05.2024 is quashed. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To

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

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

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

https://www.mhc.tn.gov.in/judis

WEB COPY

R.N.MANJULA, J.

PNM

ORDER IN
W.P.(MD).No.13494 of 2024
and WMP(MD) No.11910 of 2024

24.06.2024

https://www.mhc.tn.gov.in/judis