



W.P.(MD).No.14324 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.14324 of 2024

and

W.M.P.(MD)Nos.12573, 12574 and 12578 of 2024

R.Sinthan

...Petitioner

Vs

- 1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner,
Commissioner of Municipal Administration,
Ezhilagam,
Chennai – 600 005.
- 3.The Commissioner,
Municipal Corporation of Tiruchirappalli,
Trichy.
- 4.The Assistant Commissioner,
Srirangam Division,
Municipal Corporation of Tiruchirappalli,
Trichy.

... 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 connected with impugned proceedings dated 22.03.2021 passed in Na.Ka.No.C1/6158/2021/(Shri) by the fourth



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respondent herein and quash the same and further direct the respondent to release the entire CPS amount due to the petitioner.

For Petitioner : Mr.N.Sekar

For R-1 and R-2 : Mr.J.Ashok
Additional Government Pleader

For R-3 and R-4 : Mr.K.R.Kishore Ram
for M/s.R.B.Law Associates

ORDER

Heard Mr.N.Sekar, learned counsel for the petitioner, Mr.J.Ashok, learned Additional Government Pleader for the 1st and 2nd respondents and Mr.K.R.Kishore Ram, learned counsel for M/s.R.B.Law Associates, for the 3rd and 4th respondents.

2. This Writ Petition has been filed seeking to quash the order of the fourth respondent dated 22.03.2021 and further direct the respondent to release the entire CPS amount due to the petitioner.

3. The petitioner is a unskilled daily wage worker and his services were regularized on and from 29.06.2007. The petitioner has reached the age of superannuation on 30.04.2021. Subsequent to his retirement, he received a recovery order dated 22.03.2021 recovering a sum of



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Rs.3,91,863/-. The learned counsel for the petitioner submitted that to the last grade servants like the petitioner once an amount is paid towards salary that cannot be later recovered stating that it was excess payment. So it is claimed that the impugned order is liable to be set aside.

4. Mr.N.Sekar, learned counsel for the petitioner submitted that the recovery has been made only in view of the mistake in fixing the scale of pay of the petitioner who is an unskilled worker. In fact, the pay for the petitioner has been fixed as early as in the year 01.08.2010. All of a sudden in the year 2021, the fourth respondent has issued the impugned order of recovery calling upon the petitioner to make a payment of Rs.3,91,863/- being the total sum. The split up figures represented that a sum of Rs.3,56,239/- was excess payment and Rs.35,624/- was the management contribution for CPS.

5. Attention was drawn to the principles laid down in in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696***, wherein it is held that the recovery of excess payment wrongly made by the Department to the retired employees is impermissible for recovery. 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 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. '"



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6. In the instant case also, the recovery has been made from the petitioner who is a Group D employee and that too after several years. Though the respondents are entitled to revise the pay, if at all it is wrongly fixed, they cannot make recovery. The petitioner is not at fault or suppressed any facts in order to get any excess payment.

7. In view of the above stated reasons, this Writ Petition is **allowed** and the impugned order of recovery proceedings in Na.Ka.No.C1/6158/2021/(Shri) dated 22.03.2021 is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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R.N.MANJULA, J.

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