



WP(MD) No.14133 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) Nos.14133 to 14152 of 2024

and

W.M.P.(MD)Nos.12409, 12410 12412, 12413, 12429 to 12431, 12433,
12434 to 12437, 12440 to 12443, 12445, 12447, 12448, 12450 to
12452, 12454, 12455, 12470 to 12472, 12474, 12475, 12478, to 12480,
12519, 12520, 12510, 12512, 12517, 12518, 12514, 12515

W.P.(MD) No.14133 of 2024:

M.Veerappan

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Devakottai Division,
Sivagangai District.

2.The Treasury Officer,
District Treasury,
Sivagangai.

3.The Assistant Treasury Officer,
Karaikudi,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling records



WP(MD) No.14133 of 2024

of the 1st respondent i.e., the Revenue Divisional Officer, Devakottai in his proceedings Na.Ka.No. 1594/A2/2024 dated 15.05.2024 and quash the same and consequently direct the 3rd respondent i.e., the Assistant Treasury Officer, Karaikudi to refund the recovery already effected in the month of May, 2024.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.T.Amjadkhan

Government Advocate

COMMON ORDER

Heard Mr.S.Visvalingam, learned counsel appearing for the petitioners and Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents.

2. The petitioners have filed these petitions seeking Writ of Certiorarified Mandamus challenging the proceedings of the first respondent passed in Na.Ka.No.1594/A2/2024, dated 15.05.2024, with a consequential direction to the third respondent to refund the recovery already effected in the month of May, 2024.



WP(MD) No.14133 of 2024

WEB COPY

3. The petitioners who were lastly working as Village Administrative Officers in Sivagangai District had peacefully retired on attaining the age of superannuation. 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 13.04.1998 and as per the clarification issued in Government Letter No.30027/PC-I/1998-1 dated 28.04.1998 and the petitioners have been sanctioned house rent allowance accordingly. However, the first respondent vide the impugned orders dated 15.05.2024 ordered to recover the alleged excess payment of house rent allowance of Rs.60,387/- (all cases except WP(MD)Nos.14137 & 14148 of 2024), Rs.35,595/- (WP(MD)Nos. 14137 of 2024) and Rs.52,287/- (WP(MD)Nos.14148 of 2024) respectively from the petitioners for the period from June 2024 onwards at the rate of Rs.1,000/- per month. Challenging the said order of recovery, the present petitions are filed.

4. Mr.S.Visvalingam, learned counsel appearing for the petitioners submitted that the impugned orders have been passed without even



WP(MD) No.14133 of 2024

issuing notice or giving opportunity to the petitioners. It is his submission that for the petitioners who had retired as early as in the years 2013, 2009, 2012, 2012, 2007, 2013, 2013, 2010, 2010, 2012, 2011, 2011, 2015, 2009, 2011, 2006, 2013, 2013, 2011 and 2008 respectively, the impugned orders 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:-

"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:



WP(MD) No.14133 of 2024

(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.'''



WP(MD) No.14133 of 2024

WEB COPY

6. In the case on hand, the petitioners are retired persons and therefore, they fall 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 them the excess. It is the employer who is at fault who has been sleeping for many years without fixing his own mistake and have issued orders for recovery. As the impugned recovery is impermissible as per the settled legal position referred above, the impugned orders are liable to be set aside.

8. In the result, the writ petitions are allowed and the orders of the first respondent in Na.Ka.No.1594/A2/2024, dated 15.05.2024 are quashed and the third respondent is directed to refund the recovery, if



WP(MD) No.14133 of 2024

WEB COPY

already effected in the month of May, 2024. No costs. Consequently,
connected Miscellaneous Petitions are closed.

01.07.2024

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

sm

To

- 1.The Revenue Divisional Officer,
Devakottai Division,
Sivagangai District.
- 2.The Treasury Officer,
District Treasury,
Sivagangai.
- 3.The Assistant Treasury Officer,
Karaikudi,
Sivagangai District.



WEB COPY



WP(MD) No.14133 of 2024

R.N.MANJULA, J.

sm

Order made in
W.P.(MD) Nos.14133 to 14152 of 2024

01.07.2024