



W.P.(MD).No.14262 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.14262 of 2024
and
W.M.P.(MD).No.12522 of 2024

S.Vaniappan

Vs

...Petitioner

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 first respondent ie., the Revenue Divisional Officer, Sivakasi in his proceedings Na.Ka.A3/5876/2023-16 dated 25.05.2024 and quash the same and consequently direct the third respondent ie., the Assistant Treasury Officer, Sivakasi not to effect any recovery.



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For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

Heard Mr.S.Visvalingam, learned counsel for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader for the respondents.

2. This Writ Petition has been filed seeking to quash the order of the first respondent in his proceedings Na.Ka.A3/5876/2023-16 dated 25.05.2024 and and consequently direct the third respondent not to effect any recovery.

3. The petitioner who worked as Village Administrative Officer in Virudhunagar District had retired on attaining the age of superannuation that is on 31.12.2011. 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



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clarification issued in Government Letter No.30027/PC-I/1998-1 dated 28.04.1998 and the petitioner has been sanctioned house rent allowance accordingly. However, the first respondent vide order dated 25.05.2024 ordered the third respondent to recover the alleged excess payment of house rent allowance of Rs.57,792/- from the petitioner for the period from June 2024 onwards at the rate of Rs.2,000/- per month. 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 who had retired as early as in the year 2011, 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 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. The above judgment is squarely applicable to the case of the petitioner as he is a Group C Officer and the recovery has been made after 13 years. As the impugned recovery falls under (i) and (iii) of the impermissible recoveries enumerated in the above judgment of the Hon'ble Supreme Court held in *Rafiq Masih* case, I feel that the petitioner is also entitled to get the above benefits.

7. In view of the above, this Writ Petition is **allowed** and the order of the first respondent in Na.Ka.A3/5876/2023-16 dated 25.05.2024 is quashed and the third respondent is directed not to effect any recovery from the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

02.07.2024

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



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R.N.MANJULA, J.

Nsr

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