



WP(MD). No.15056 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 08/07/2024

CORAM

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

WP(MD). No.15056 of 2024

and

WMP(MD) No.13197 of 2024

Manimuthusamuel

... Petitioner

Vs

1.The Accountant General (A&E)
Tamilnadu, Chennai 600 018.

2.The Regional Joint Director of Treasuries
and Accounts,
Tirunelveli 627 009.

3.The Chief Treasury Officer,
Tirunelveli District, Tirunelveli 627 009.

4.The Sub Treasury Officer,
Nanguneri 627108
Tirunelveli District

5.The Block Development Officer No.III
Sathankulam 628 704
Thoothukudi District

... Respondents

PRAYER :-Writ Petition, filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in ந.க.எண்.729/2023/191 dated 27.05.2024 passed by the 4th

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



WP(MD). No.15056 of 2024

respondent and to quash the same and consequently direct the respondents to reimburse the recovered amount of Rs.67,494/- from the family pension and direct the respondents to continue to pay the family pension @ Rs.25,245/- (normal family pension @ 16,830/- + DA @ Rs.8415/-) w.e.f. 01.05.2024 to the petitioner.

For Petitioner : Mr.J.David Ganesan

For Respondents: Mr.M.Siddharthan
Special Government pleader

ORDER

The writ petition has been filed challenging the impugned order passed of the respondent No.4 dated 27.05.2024.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

3. By consent, the writ petition itself is taken up for final disposal.

4. The petitioner is a family pensioner and through the impugned order, the 4th respondent has recovered a sum of Rs.67,494/-, which was calculated to be excess payment due to the wrong fixation of pension consequent to the pay revision recommendations.

5. No doubt, the proceedings for revision consequent to the pay revision has been issued as early as in the year 2017. For the alleged error that had taken place in the year 2017, proceedings for recovery has been issued in the year 2024 and the



WP(MD). No.15056 of 2024

said recovery is impermissible in view of the principles laid down by the Hon'ble Supreme Court in *State of Punjab and others vs. Rafiq Masih (White Washer)* reported in AIR 2015 SC 696, wherein, it had been 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:

(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



WEB COPY



WP(MD). No.15056 of 2024

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."

6. In the case on hand, the petitioner's wife was a retired person. 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 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.



WP(MD). No.15056 of 2024

WEB COPY

8. (*)In the result, the writ petition is allowed and the impugned order of the fourth respondent No.4 in Na.Ka.No.729/2023/D1 dated 27.05.2024 is hereby quashed and the respondents are directed to reimburse the recovered amount of Rs.67,494/- (Rupees Sixty Seven Thousand Four Hundred and Ninety Four only) from the family pension to the petitioner and the respondents are further directed not to effect any recovery. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD.II)

(*)Corrected as per order of this Court dated 01/08/2024 made in WP(MD)No. 15056 of 2024.

Sd/-

Assistant Registrar(CO)

// True Copy //

/08/2024

Sub Assistant Registrar
(CS-I/II/III/IV)

RR

To

(*)To be substituted to the order already despatched on 30/07/2024

1.The Accountant General (A&E)

Tamilnadu,

Chennai 600 018.

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



WP(MD). No.15056 of 2024

2.The Regional Joint Director of Treasuries
and Accounts,
Tirunelveli 627 009.

3.The Chief Treasury Officer,
Tirunelveli District,
Tirunelveli 627 009.

4.The Sub Treasury Officer,
Nanguneri 627108
Tirunelveli District

5.The Block Development Officer No.III
Sathankulam 628 704
Thoothukudi District

+1 CC to M/s.S.MAHALAKSHMI, Advocate (SR-33290[F] dated 09/07/2024)

+1 CC to M/s.J.DAVID GANESAN, Advocate (SR-33425[F] dated 10/07/2024)

+1 CC to M/s.SPL.GP (SR-33676[F] dated 10/07/2024)

WP(MD) No.15056 of 2024
08/07/2024

SI(24.07.2024) 6P/ 9C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.

SL(27.08.2024)/ 6P/ 9C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.