



W.P.(MD)No.15804 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2024

CORAM

**THE HONOURABLE MS JUSTICE R.N.MANJULA**

W.P.(MD)No.15804 of 2024

and

W.M.P.(MD)Nos.13756 and 13757 of 2024

N.Sivalingam

... Petitioner

Vs.

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

2.The Treasury Officer,  
District Treasury,  
Sivagangai.

3.The Assistayt 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 to call for the records of the first 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 third respondent i.e., the Assistant Treasury Officer, Karaikudi to refund the recovery already effected in the month of May, 2024 and June 2024.



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For Petitioner : Mr.S.Visvalingam  
For Respondents : Mr.S.Shanmugavel  
Additional Government Pleader

### **ORDER**

This writ petition has been filed to quash the order in Na.Ka.No. 1594/A2/2024 dated 15.05.2024 and consequently to direct the third respondent i.e., the Assistant Treasury Officer, Karaikudi to refund the recovery already effected in the month of May, 2024 and June 2024.

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

3.The petitioner was lastly working as a Village Administrative Officer and retired from service on 28.02.2010. 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 15.05.2024 the first respondent has directed the third respondent



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to recover the alleged excess payment of HRA of Rs.60,387/- paid to him from the month of May, 2024 in 60 monthly instalments at the rate of Rs.1,000/- per month. Challenging the same, the present petition is filed.

4. The Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696*** had held that recovery of excess payment wrongly made by the Department to Group-C and Group-D employees is impermissible in law. In similar circumstances, this Court in ***W.P.No.1122 of 2020 and batch dated 23.11.2023 [M.Santha vs. The Joint Director (Employment), O/o.Director of Employment and Training, Guindy, Chennai - 600 032 and batch]***, by 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*



*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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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 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 is 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



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*aside and these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."*

6. In the case on hand, the petitioner was working as Village Administrative Officer in the respondent Department at the time of retirement. The recovery has been made subsequent to his retirement after 10 years. Hence, the recovery would fall under clauses (i) (ii) and (iii) of the impermissible recovery as settled down in the '**White Washer**' case. Since the recovery is impermissible in law as per the decision cited supra, recovery order is liable to be set aside.

7. In view of the above observations, the writ petition is allowed and the order of the first respondent in Na.Ka.No. 1594/ A2/ 2024, dated 15.05.2024 is quashed. No costs. Consequently, the connected Miscellaneous Petition is closed

**15.07.2024**

NCC:yes/no  
Index:yes/no  
Internet:yes/no  
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- To
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  - 2.The Treasury Officer,  
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**R.N.MANJULA, J.**

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