



WP(MD). No.15858 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 16/07/2024

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

**WP(MD). No.15858 of 2024
and WMP(MD) Nos.13784 and 13785 of 2024**

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... Petitioner

Vs

1. The Revenue Divisional Officer,
Sivakasi Division,
Virudhunagar District..

2. The Treasury Officer,
District Treasury,
Virudhunagar..

3. The Assistant Treasury Officer,
Sub Treasury, 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 records of the 1st and 3rd respondents i.e., the Revenue Divisional Officer, Devakottai in his proceedings in his Na.Ka.A3/5876 / 2023-26 dated 25.05.2024 and the Assistant Treasury Officer, Sub Treasury, Sivakasi in proceedings in Na.Ka.No. 569687/A1/2024 dated 10.06.2024



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and quash the same and consequently direct the 3rd respondent i.e., the Assistant Treasury Officer, Sub Treasury, Sivakasi not to effect and recovery and to refund the recovery already effected in the month of June, 2024.

For Petitioner : Mr.S Visvalingam,
For Respondents : Mr.J.Ashok
Additional Government Pleader

ORDER

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

2. The petitioner has filed the writ petition challenging the impugned order of the 1st respondent dated 25.05.2024 and consequently direct the third respondent not to effect any recovery.

3. The petitioner, who worked as Village Administrative Officers in Virudhunagar District had peacefully retired on attaining the age of superannuation. The house rent allowance was revised from 01.01.1996



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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 petitioner has been sanctioned house rent allowance accordingly. However, the first respondent vide the impugned orders dated 25.05.2024 ordered to recover the alleged excess payment of house rent allowance of Rs.57,577/- from the petitioner for the period from June 2024 onwards at the rate of Rs.2,000/- per months. 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 2007, 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



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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:

(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



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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. ””

6. In the case on hand, the petitioner is a retired person and therefore, he falls under Clause (i)(ii) and (iii) 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



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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.

8. In the result, the writ petition is allowed and the order of the first respondent in Na.Ka.A3/5876/2023-11 dated 25.05.2024 is quashed and the third respondent is directed not to effect any recovery. No costs. Consequently, connected Miscellaneous Petitions are closed.

16.07.2024

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TO

1. The Revenue Divisional Officer,
Sivakasi Division,
Virudhunagar District..

2. The Treasury Officer,
District Treasury,
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3. The Assistant Treasury Officer,
Sub Treasury, Sivakasi, Virudhunagar District.

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R.N.MANJULA,J

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