



W.P.(MD)Nos.18617, 15283 to 15285, 14957 to 14962, 15023 to 15027 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)Nos.18617, 15283 to 15285, 14957 to 14962, 15023 to 15027
of 2023 & 3907 to 3910 of 2024

W.M.P(MD)Nos.15460, 12880, 12885, 12888, 12598, 12604, 12601,
12600, 12603, 12605, 12645, 12646, 12650, 12644, 12647 of 2023 &
3792, 3794, 3795 & 3796 of 2024

W.P.(MD)No.18617 of 2023

S.Durairaj

... Petitioner

vs.

1.The Revenue Divisional Officer,
Tirunelveli Division,
Tirunelveli.

2.The Tahsildar,
Tirunelveli Taluk,
Tirunelveli.

3.The Treasury Officer,
District Treasury,
Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling records of the
first respondent i.e., the Revenue Divisional Officer, Tirunelveli in his



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proceedings Na.Ka.No.A7/2741/2022-36 dated 30.05.2023 and quash the same and consequently direct the third respondent i.e., the Treasury Officer, District Treasury, Tirunelveli to refund the recovery already effected within the time stipulated by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.M.Lingadurai
Special Government Pleader

COMMON ORDER

Heard Mr.S.Visvalingam, learned counsel appearing for the petitioners and Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents.

2. The petitioners have filed these petitions seeking to quash the order of recovery made by the first respondent on 30.05.2023 and third respondent on 13.02.2024 respectively and to refund the amount already recovered, if any.

3. The petitioners who worked as Village Administrative Officers and Assistant respectively had peacefully retired on attaining the



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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 impugned orders were passed to recover the alleged excess payment of house rent allowance from the petitioners respectively. Challenging the said orders of recovery, the present petitions are filed.

4. Mr.S.Visvalingam, learned counsel appearing for the petitioners submitted that for the petitioners who retired long before, recovery orders have been passed only in the years 2023 & 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



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the Department to the retired employees is impermissible in certain circumstances. 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 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*



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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 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 him excess pay. 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 orders are liable to be set aside.



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8. In the result,

(i) The writ petitions in W.P.(MD)Nos.18617, 15283 to 15285, 14957 to 14962 and 15023 to 15027 of 2023 are **allowed** and the orders of the first respondent dated 30.05.2023 are quashed and the third respondent is directed to refund the recovered amount, if any, within a period of six weeks from the date of receipt of a copy of this order.

(ii) The writ petitions in W.P.(MD)Nos.3907 to 3910 of 2024 are **allowed** and the proceedings of the third respondent dated 13.02.2024 are quashed.

(iii) No costs. Consequently, connected Miscellaneous Petitions are closed.

11.06.2024

NCC: Yes/No

Index : Yes/No

Speaking/Non-Speaking order

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To
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R.N.MANJULA, J.

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