



W.P.(MD)No.12148 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2024

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.12148 of 2017
and
W.M.P(MD)Nos.9367 & 9368 of 2017
and
W.M.P(MD)No.4773 of 2018

S.Abirami

... Petitioner

Vs.

- 1.The Accountant General
(Accounts & Entitlements) Tamilnadu,
361, Anna Salai,
Teynampet,
Chennai-600 018.
- 2.Regional Joint Director,
Treasuries and Accounts,
Collectorate Complex,
Madurai-625 020.
- 3.Treasury Officer,
Dindigul District Treasury,
Dindigul District.
- 4.Assistant Director of Animal Husbandry,
Erode,
Erode District-633 031.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No.3267/2017/G2, dated 09.03.2017 and the consequential impugned order in Na.Ka. 3267/2017/G2 dated 15.05.2017 and quash the same as illegal.

For Petitioner : Mr.R.J.Karthick

For R1 : Mr.P.Gunasekaran

For R2 to R4 : Mr.G.Suriya Ananth
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned recovery order dated 09.03.2017 passed by the third respondent and the consequential order dated 15.05.2017.

2. The petitioner has challenged the impugned order, in which, a sum of Rs.6,95,682/- has been claimed from the petitioner on account of the alleged excess payments made to the petitioner towards family pension. The petitioner has challenged the impugned order by raising various grounds including the ground that the recovery made after an inordinate delay is impermissible in law and also on the ground that the violative of principles of natural justice, the



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impugned order has been passed. The alleged excess payments made by the respondents to the petitioner pertains to the period from 06.11.2007 to 28.02.2017 amounting to Rs.6,76,750/-.

3. The learned counsel appearing for the petitioner drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) etc.***, reported in **2015 AIR 696** and would submit that since the recovery order has been issued without following the directions issued by the Hon'ble Supreme Court in the afore cited decision, the impugned order has to be quashed. He would also submit that the recoveries pertain to a period beyond the period of 5 years, which is not permissible under law as per the decision of the Hon'ble Supreme Court referred to supra.

4. On the other hand, the learned Additional Government Pleader appearing for the respondents 2 to 4 would reiterate the contentions of the counter affidavit filed by the third respondent and would submit that the recovery order has been issued only due to the excess payments made by the respondents towards family pension payable to the petitioner. The alleged excess payments pertain to the period from 6.11.2007 to 28.02.2017 and it



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amounts to Rs.6,76,750/-. The Hon'ble Supreme Court has made it clear in the

Rafiq Masih (White Washer)'s case referred to supra that under the following circumstances, the recoveries from the employees 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."

5. The aforesaid decision of the Hon'ble Supreme Court has not been considered by the respondents in the impugned order before directing the petitioner to pay a sum of Rs.6,76,750/- since the recoveries pertain to certain periods beyond the period of 5 years, one of the prohibitions stipulated in the



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Hon'ble Supreme Court decision in ***State of Punjab and others vs. Rafiq Masih***

(White Washer) etc., reported in ***2015 AIR 696*** namely that the recovery from the employees when the excess payment has been made from the period in excess of 5 years before the order of recovery may come into play and may come to the benefit of the petitioner. The impugned order is a cryptic and non-speaking order calling upon the petitioner to pay a sum of Rs.6,95,682/- on account of alleged excess payments made by the respondents to the petitioner towards family pension. Being a non-speaking and cryptic order and the order having not considered the decision the Hon'ble Supreme Court in ***Rafiq Masih (White Washer)*** case, this Court is of the considered view that the impugned order has to be quashed, the matter is remanded back to the third respondent for fresh consideration on merits and in accordance with law in the light of the decision rendered by the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) etc.***, reported in ***2015 AIR 696***, within a time frame fixed by this Court.

6. In the result, the impugned order of the third respondent dated 09.03.2017 and the consequential impugned order, dated 15.05.2017 are hereby quashed. The matter is remanded back to the third respondent for fresh consideration on merits and in accordance with law in the light of the decision



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rendered by the Hon'ble Supreme Court in the case of *State of Punjab and*

others vs. Rafiq Masih (White Washer) etc., reported in *2015 AIR 696*. The

third respondent is directed to pass final orders within a period of twelve (12) weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

16.08.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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To

- 1.Regional Joint Director,
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- 2.Treasury Officer,
Dindigul District Treasury,
Dindigul District.
- 3.Assistant Director of Animal Husbandry,
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ABDUL QUDDHOSE, J.

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