



W.P.(MD)No.18206 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.09.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.18206 of 2017

and

W.M.P.(MD)Nos.14649 & 14650 of 2017 & 3978 of 2024

S.Maninuthu Samuel

... Petitioner

/Vs./

1.The Accounts General (A&B),
Chennai – 600 018.

2.The Additional Assistant Elementary Educational Officer,
Radhapuram,
Tirunelveli District.

3.The Regional Joint Director of Treasuries and Accounts,
Tirunelveli – 627 003.

4.The Assistant Treasury Officer,
Nanguneri,
Tirunelveli District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings in Na.Ka.No.543/2017/E dated 31.07.2017 passed by the Respondent No.3 and to quash the same and further direct the Respondent Nos.1 to 4 to refund the deducted amount along with reasonable interest within the time limit fixed by this Court.

For Petitioner : Mr.J.David Ganesan

For Respondents : Mr.P.Gunasekaran (R1)

Mrs.D.Farjana Ghoushia (R2 to R4)

Special Government Pleader

ORDER

This writ petition has been filed challenging the order dated 31.07.2017 passed by the third respondent proposing to recover a sum of Rs.92,314/- from the petitioner, which according to the respondents, is excess payments made to the petitioner towards his pension amount.

2. The alleged excess payments made by the respondents to the petitioner pertains to the year 2015. Based on an audit objection, the



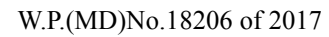
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impugned order has been passed proposing to recover the aforesaid amount from the petitioner.

3. It is now brought to the notice of this Court by the learned Special Government Pleader appearing for the official respondents that subsequent to the passing of the impugned order, out of the sum of Rs.92,314/-, a sum of Rs.90,000/- has already been recovered.

4. The petitioner has challenged the impugned order only on the ground of violation of principles of natural justice. However, as seen from the counter affidavit filed by the fourth respondent, prior to the passing of the impugned order, the petitioner was issued with a show cause notice calling for an explanation, and a reply was also sent by the petitioner on 12.07.2017, whereas the impugned order was passed only on 31.07.2017.

5. Therefore, it is clear that only after the explanation from the petitioner was received and after considering the same, the impugned order was passed, proposing to recover a sum of Rs.92,314/- from the



6. The Hon'ble Supreme Court, in the case of *State of Punjab and Others v. Rafiq Masih (White Washer) and Others* reported in 2015 (4) 334, had issued the following directions, wherein recoveries by the payers, would be impermissible in law:

(ii) Recovery from retired employees, or employees who are due to retire within one year, of 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.

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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.”

7. In the case on hand, none of the aforesaid conditions have been satisfied by the petitioner. Admittedly, recovery of the alleged excess payments made to the petitioner pertains to the year 2015 and the impugned order came to be passed on 31.07.2017, which is within five year period. The amount recovered from the petitioner is only Rs.92,000/-. The petitioner was a Headmaster and he had retired from service and he has been receiving pension regularly from the respondents and therefore, the recovery made by the respondents cannot also be treated to be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

8. Further, this writ petition has been filed on the ground of violation of principles of natural justice, as seen from the grounds raised in this writ petition. Since the principles of natural justice have not been violated by the respondents, in view of the fact that only after receiving



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the explanation from the petitioner, the impugned order came to be passed, this Court is of the considered view that there is no merit in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

11.09.2024

Index : Yes / No
NCC : Yes / No
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TO:

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ABDUL QUDDHOSE, J.

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Order made in
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Dated:
11.09.2024