

W.P.No.27016 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27016 of 2014

and

M.P.No.1 of 2014 and W.M.P.No.11403 of 2017

D.Balasubramanian,
S/o. Late D.Damodaran

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Personnel and Administrative
Reforms (U-Spl.) Department,
Secretariat, Chennai – 600 009.

2.The State of Tamil Nadu,
Represented by its Secretary to Government,
Public Establishment (E-IV) Department,
Secretariat, Chennai – 600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order made in Letter No.17981/U-Spl./2014-1 dated 02.06.2014 passed by the 1st respondent and in confirming order made in G.O.(Ms.) No.184, Public (Establishment-IV) Department dated 04.03.2014 passed by the 2nd respondent



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and quash the same and consequently forbear the respondents from deducting any amount from the pension paid to the petitioner.

For Petitioner : Mr.G.Ethirajulu

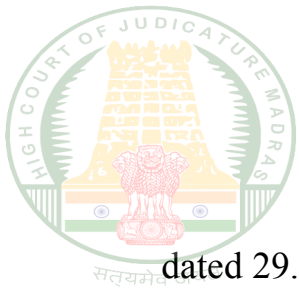
For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The petitioner is before this Court against the Impugned Order dated 02.06.2014 passed by the 1st respondent whereby, the 1st respondent has affirmed the decision of the 2nd respondent dated 04.03.2014 in G.O.(Ms) No.184, Public (Establishment-IV) Department dated 04.03.2014.

2. The order of the 2nd respondent dated 04.03.2014, which was also impugned in this writ petition was passed long after the petitioner has resigned from the services with effect from 31.07.2010 after his application for Voluntary Retirement Scheme (VRS) was accepted by the respondents Department.

3. The case of the respondents appears to be that the petitioner was governed by basic services and was therefore not entitled to the benefits of G.O.(Ms.) No.126, Personnel and Administrative Reforms (U.SPL) Department



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dated 29.05.1998 and G.O.(Ms) No.171, Personnel and Administrative Reforms (U-Spl.) Department dated 28.09.2006.

4. Learned counsel for the petitioner would submit that the issue is no longer *res integra* and is covered by the decision of the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) and others**, (2015) 4 SCC 334.

5. Learned Special Government Pleader for the respondents on the other hand would submit that the said decision will not apply as the benefit of the above Government Orders were not applicable to the petitioner and therefore the Impugned Order does not warrant any interference under Article 226 of the Constitution of India.

6. Specifically, the learned Special Government Pleader for the respondents would submit that the benefit of G.O.(Ms.) No.126, Personnel and Administrative Reforms (U.SPL) Department dated 29.05.1998 will apply only to the person who were recruited on or before 28.01.1994 in the Tamil Nadu Secretariat Service which was also reiterated by G.O.(Ms) No.171, Personnel and Administrative Reforms (U-Spl.) Department dated 28.09.2006.



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7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

8. The issue is no longer *res integra* and is covered by the decision of the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) and others**, (2015) 4 SCC 334, and was followed by the decision of the Hon'ble Supreme Court in **Jagdish Prasad Singh Vs. State of Bihar and others**, [2024] 8 S.C.R. 377.

9. Paragraph 18 in **Rafiq Masih (White Washer) case** (*cited supra*), the ratio has been captured. Paragraph 18 reads as follows:-

“18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- i. Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).



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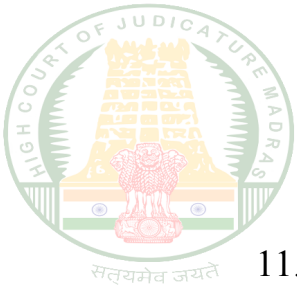


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- ii. Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- iii. Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the 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.”

(emphasis supplied)

10. This was also reiterated by the Hon'ble Supreme Court in **Jagdish Prasad Singh case** (*cited supra*). The decision of the Hon'ble Supreme Court in **Rafiq Masih (White Washer) case** (*cited supra*) cannot be denied to the facts of the case as the law is now settled in favour of the petitioner.



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11. At this stage, it is informed by the learned counsel for the petitioner that though the petitioner has retired from service on 31.07.2010, till date his terminal benefits have not been settled.

12. Considering the same, the respondents are directed to process the terminal benefits of the petitioner from 31.07.2010 within a period of 3 months from the date of receipt of a copy of this order together with interest on the belated payment from the date on which the amount due at 9% per annum.

13. This Writ Petition stands disposed of with the above observations.
No costs. Connected Miscellaneous Petitions are closed.

19.02.2025

Neutral Citation : Yes / No

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To:

1. The Secretary,
Government of Tamil Nadu,
Personnel and Administrative



W.P.No.27016 of 2014

Reforms (U-Spl.) Department,
Secretariat, Chennai – 600 009.

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2.The Secretary,
Government of Tamil Nadu,
Public Establishment (E-IV) Department,
Secretariat, Chennai – 600 009.

C.SARAVANAN, J.

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