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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.28367 of 2019

1 T.S.Sankar
I.D.No.11078 S/o. Sundaramoorthy No. 11,
Old No. 7, Thalayari Street West Mambalam
Chennai 600 033. ... Petitioner

Vs.

1 The Vice Chancellor
Anna University Chennai 600 025.
2 The Registrar
Anna University Chennai 600 025. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, Call for the records of the 2nd Resondents in Lr.No. 11078 / PR3 / 1994 dated 16.07.2019 quash the same and directing the Respondents to repay a sum of Rs. 4,05,298/-(Rupees Four Lakhs Five Thousand Two Hundred and Ninety Eight only) with consequential interest of 12 percentage based on the petitioners representation.



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For Petitioner : Mr.V.K.Elango

For Respondents : Mr.Meenakshi Sundaram, standing counsel

ORDER

This Writ Petition has been filed under a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Lr.No.11078/PR3/1994 dated 16.07.2019, quash the same and direct the respondents to repay a sum of Rs. 4,05,298/-(Rupees Four Lakhs Five Thousand Two Hundred and Ninety Eight only) with consequential interest at the rate of 12%, based on the petitioner's representation.

2.Heard, Mr.V.K.Elango, learned counsel for the petitioner, Mr.Meenakshi Sundaram, learned standing counsel for respondents and perused the materials available on record.

3. The petitioner was appointed as a Junior Assistant on 05.04.1989 and reappointed as a Typist on 09.11.1989 at the respondent university. He retired from service on 30.06.2017 upon attaining the age of superannuation. On 11.05.2018, the petitioner's grade pay was reduced, and consequently, a sum of



Rs. 1,86,195/- was recovered from the terminal benefits payable to him, citing it as an excess payment. An order to that effect was passed by the 2nd respondent on 11.05.2018 without giving any prior notice to the petitioner. Despite the petitioner has made several representations to the respondents stating that the deduction was illegal, the amount has not been refunded to him so far. Additionally, the petitioner was issued a recovery order on 16.07.2019, stating that his pay had been wrongly fixed. The petitioner apprehends that, due to the above deduction, the respondents might also revise the fixation of his pension and reduce the same.

4. Mr.V.K.Elango, learned counsel for the petitioner submitted that the above deduction cannot be made in view of the well-settled principles of law on this point, as established in ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** [reported in (2015) 4 SCC 334], popularly known as the '*White Washer Case*'. In fact, based on the aforesaid judgement of the Hon'ble Supreme Court, a Government Order has also been issued in G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018. According to the said Government Order, wherever any excess payments are identified, appropriate action should be taken after following the prescribed procedure, and the person



responsible for such excess payment should be held liable.

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5. Mr.Meenakshi Sundaram, learned standing counsel for respondents submitted that the petitioner was erroneously fixed with a higher grade pay, which resulted in an excess payment of Rs.1,86,195/-. Any loss to the government cannot be permitted, and hence, the excess pay and allowances drawn by the petitioner are liable to be recovered. In this regard, necessary procedures have already been issued to the petitioner, and his pension has been revised and re-fixed accordingly. In accordance with the Government Order in G.O.Ms.No.313, Finance (Pay Cell) Department, dated 25.10.2017, if a retiring government servant does not clear any of the government dues and such dues are ascertainable, the department is bound to take an equivalent cash deposit from him/her or recover an amount equal to the dues from the gratuity payable to him/her. What was done by the respondents are in accordance with Rule 17 of the Tamil Nadu Pension Rules, 1978.

DISCUSSION

6. As per the order dated 16.07.2019 issued by the respondents, it was stated that the petitioner's pay had been wrongly fixed, leading to a revision of his pay, which resulted in the recovery of an excess amount of Rs.1,86,195/-. It



was further submitted that the recovery was carried out in accordance with the law from the gratuity amount payable to the petitioner. Regarding Rule 17 of the Tamil Nadu Pension Rules, 1978, there is no dispute that a government servant must clear all dues payable before retirement. But in the instant case, it is not the dues to be paid by the individual, and the individual did not even know that he had been paid an excess payment at any point of time before his retirement. There was no misrepresentation or fraud committed by the petitioner to get any excess fixation of pay or grade pay, and whatever was paid to him is only as per the orders of the respondents.

7. Despite the petitioner have retired from service as early as 2017, the recovery order was issued nearly a year later, on 11.05.2018. As per the worksheet furnished to the petitioner, it is unclear from when onwards the excess fixation occurred. Furthermore, the petitioner was not issued with any show cause notice before the recovery was ordered from the gratuity amount payable to him. The Hon'ble Supreme Court, in ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** (cited supra), has held that certain types of recoveries by employers are impermissible in law. The relevant Paragraph No. 18 of the said judgment is extracted below:



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“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 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 or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

8. The petitioner is classified as a Group-C employee and falls under Clause (i) of the guidelines issued by the Hon'ble Supreme Court. It is further stated that the recovery has been made against the petitioner post-retirement, which is also impermissible. As the recovery from the petitioner is not permissible in view of Clauses (i) and (ii) of the aforesaid guidelines issued by the Hon'ble Supreme Court, it is liable to be set aside. However, the respondents



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are at liberty to re-fix the petitioner's pension or rectify any erroneous fixation of pay, provided they issue a show cause notice and allow him an opportunity to be heard.

9. In view of the foregoing reasons, the Writ Petition is **allowed**, and the impugned order passed by the 2nd respondent in Lr.No.11078/PR3/1994 dated 16.07.2019 is set aside. The respondents are directed to issue a fresh notice to the petitioner regarding the re-fixation of pay, offer the petitioner an opportunity to make his submissions, and thereafter pass a fresh order. The respondents are further directed to refund the amount already recovered from the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

06.02.2025

Index : Yes
Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs



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R.N.MANJULA, J.
jrs

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To

- 1 The Vice Chancellor
Anna University Chennai 600 025.
- 2 The Registrar
Anna University Chennai 600 025.

W.P No.28367 of 2019
and
WMP.No.30139 of 2019

06.02.2025