

W.P.(MD)No.11823 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2025

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.11823 of 2024

A.Sivakumar

... Petitioner

Vs.

1. The Agricultural Production Commissioner and
Secretary to Government,
Agriculture Department,
Secretariate,
Chennai-600 009.

2. The Director of Agriculture,
Chepauk,
Chennai-600 005.

3. The Joint Director of Agriculture,
Kattuthottam,
Mariamman Kovil Post – 613 501,
Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the third respondent i.e., the Joint Director of Agriculture, Thanjavur in his impugned proceedings No.செ.மு.ஆ.எண்.அ1/9960/2021 dated 28.07.2022 and quash the same and consequently direct the first respondent i.e., the Agricultural Production Commissioner and Secretary to Government, Agricultural



W.P.(MD)No.11823 of 2024

Department, Chennai to refund the amount of Rs.6,31,758/- recovered from the petitioner, as per the provisions contained in White Washer's case reported in (2015) 4 SCC 334 and followed in number of cases by the Hon'ble Writ Court and Hon'ble Division Bench.

For Petitioner : Mr.S.Viswalingam

For Respondents : Mr.D.Sachikumar
Additional Government Pleader

ORDER

The present writ petition has been filed challenging the order of the 3rd respondent, dated 28.07.2022 and to direct the first respondent to disburse the petitioner's deducted pension amount.

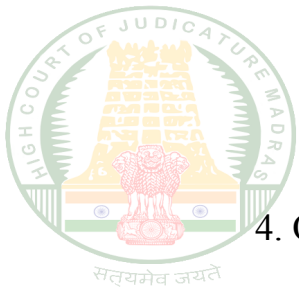
2. The case of the petitioner is that he served as a Assistant Director of Agriculture and retired from service on 28.02.2023 and he was allowed to retire from service as per proceedings dated 27.02.2023. As per the proceedings issued by the Joint Director of Agriculture, Thanjavur dated 14.07.2022, petitioner's pay was refixed, while he was serving as Assistant Agricultural Officer in the office of the Joint Director of Agriculture, Thanjavur as per the recommendation of the Pay Grievance Redressal committee. Again on 28.07.2022, the impugned proceedings has been passed and recovery has been



W.P.(MD)No.11823 of 2024

ordered for the payment received from 01.12.2010 to 30.09.2017. While, the petitioner was in service i.e, before his date of superannuation, a sum of Rs.6,31,758/- was recovered from the petitioner. Aggrieved by the said order, the petitioner filed this writ petition.

3. The learned Counsel for the petitioner would submit that as per G.O.Ms.No.401, Finance (Pay Cell) Department, dated 12.11.2020 in Para.19, it is clearly stated that consequent on the implementation of revision of scale of pay ordered by Pay Grievance Redressal Committee, 2019, it is ordered that any excess emolument / Pension already drawn by the employees / pensioners in the categories of Agriculture / Horticulture Officer and and its promotional posts in Agriculture/ Horticulture Department upto October, 2020 shall not be recovered. Moreover, the Hon'ble Supreme Court of India held in the White Washer's case reported in 2015 (4) SCC 334 has categorically ordered that the recovery from the employees who is due to retire within one year cannot be recovered. In the present case, the petitioner's date of superannuation was on 28.02.2023, recovery order has been issued on 28.07.2022, i.e., within six months before the date of superannuation. Hence, he prayed to allow this writ petition.



W.P.(MD)No.11823 of 2024

4. On behalf of the respondents 2 and 3, a counter affidavit has been filed.

Based on the averments made in the counter affidavit, the learned Government Advocate submits that before issuing the impugned order, the petitioner was issued notice to submit his objections and accordingly, the petitioner submitted his objections. Thereafter only, the impugned order is passed. In view of the same, the petitioner cannot contend that there is violation of principles of natural justice in issuing the impugned order and sought to dismiss the writ petition.

5. This Court gives its anxious consideration to the submissions made by the respective counsels and carefully perused the materials available on record.

6. Admittedly, the petitioner, who served as a Assistant Director of Agriculture, retired from service on 28.02.2023. Now, the respondents are contemplating to recover an amount of Rs.6,31,758/- on the ground that excess payment was paid to the petitioner from 01.12.2010 to 30.09.2017, wrong fixation of pay to the petitioner. The only issue to be considered in this writ petition is whether respondents 2 and 3 are entitled to recover the alleged excess payment made to the petitioner vide impugned proceedings at the verge of retirement or not?



W.P.(MD)No.11823 of 2024

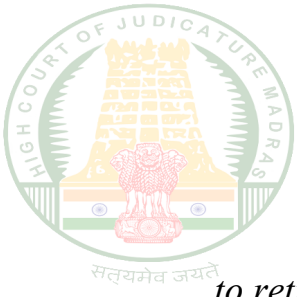
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7. Considering the facts and circumstances of the case, this Court is of the considered opinion that the 2nd and 3rd respondents are not entitled to recover the said amount from the petitioner as it is contemplated before six months of the retirement of the petitioner.

8. In fact, on several occasions, identical issue came up for consideration before this Court. By following the proposition of law laid down by the Hon'ble Apex Court reported in **2015 (4) SCC 334 (State of Punjab & Others Vs. Rafiq Masih(White Washer) & Others)**, this Court set aside the proceedings of recovery in W.P.No.6945 of 2022, dated 26.06.2023 and in W.P(MD)No.16106 of 2016, dated 20.07.2023. The relevant portion of the judgment of the Hon'ble Apex Court in **Rafiq Masih (White Washer)** (supra), is extracted herein under:

“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 ClassIV service (or Group C and Group D service).



W.P.(MD)No.11823 of 2024

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(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 employers right to recover.”*

9. One of the guidelines as relevant to the present case is that no recovery to be initiated from retired employees or employees, who are due to retire within one year of the order of recovery. In the present case, the petitioner retired on 28.02.2023. The respondents passed order for recovery of the excess payment on 28.07.2022. Thus, the impugned order is unsustainable.

10. The Hon'ble Apex Court in ***Thomas Daniel*** case, while considering identical issue, held as extracted herein under:

“(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by



W.P.(MD)No.11823 of 2024

the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.”

11. This Court in W.P.(MD) No.17154 of 2016 and W.P.(MD) No.22395 of 2016, while dealing the identical issues, has set aside the orders for recovery impugned therein.

12. On consideration of the facts and circumstances of the present case and in the light of the authorities stated supra, this Court has no hesitation to hold that the action of the third respondent in issuing the impugned order for recovery from the pension of the petitioner is illegal, arbitrary, unjust and in violation of the principles of natural justice and accordingly, the impugned order is liable to be set aside.

13. For the above reasons, the Writ Petition is allowed with the following directions: -

7/10



W.P.(MD)No.11823 of 2024

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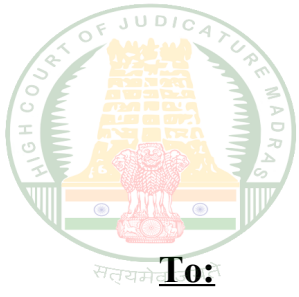
i) The order in Se.Mu.A.No.A1/9960/2021 dated 28.07.2022, issued by the third respondent is hereby set aside.

ii) Any amount recovered from the petitioner or arrears if any, shall be paid within a period of six (6) weeks from the date of receipt of copy of this order.

There shall be no order as to costs.

24.03.2025
6/9

NCC:yes/no
Index:yes/no
Internet:yes/no
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W.P.(MD)No.11823 of 2024

To:

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Agriculture Department,
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2. The Director of Agriculture,
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3. The Joint Director of Agriculture,
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W.P.(MD)No.11823 of 2024

BATTU DEVANAND, J.

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W.P.(MD)No.11823 of 2024

24.03.2025

6/9