

W.A.(MD) No.2685 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE DR. JUSTICE A.D.MARIA CLETE

W.A.(MD) No.2685 of 2024
and C.M.P.(MD) No.18626 of 2024

R.Thanuvalingom

... Appellant

Vs.

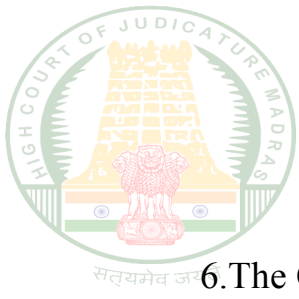
1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
St.Fort George,
Chennai – 600 009.

2.The Accountant General,
Accountant General Office,
Anna Salai, Chennai.

3.The Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Buildings, Saidapet, Chennai.

4.The Director of Local Fund Accounts and Audit,
571, Anna Salai,
Nanthanam, Chennai.

5.The District Collector,
Nagercoil,
Kanyakumari District.



W.A.(MD) No.2685 of 2024

6.The Commissioner,
Rajakkamangalam Panchayat Union,
Pazhavilai Post,
Kanyakumari District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the impugned orders passed in W.P.(MD) No.13122 of 2018 dated 09.08.2024 and allow the Writ Appeal.

For Appellant : Mr.G.Ramanathan

For Respondents : Mr.S.R.A.Ramachandran,
Additional Government Pleader

JUDGMENT

(Order of the Court was made by M.S.RAMESH, J.)

The appellant herein is an Electrician/Class III employee, who retired from the services on 31.05.2014. Claiming that the respondents herein had not paid certain monetary retirement benefits, the appellant had been making several representations. After about 5 years, the sixth respondent herein had passed an order on 06.02.2018 based on certain audit objections and claimed that a sum of Rs.6,48,379/- has been wrongly paid to the appellant in his promoted post of Electrician Grade-I, which post was not a sanctioned post. When the appellant herein had challenged the said order before the learned Single Judge in W.P.(MD) No.13122 of



W.A.(MD) No.2685 of 2024

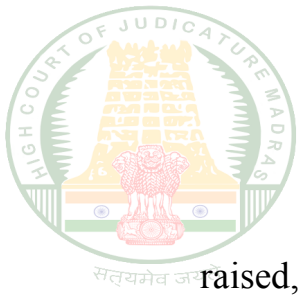
WEB COPY

2018, the Writ Petition came to be dismissed on 09.08.2024 on the sole ground that the appellant had given an unconditional affidavit of undertaking to the respondents herein for refund of any excess amount in future and therefore, the impugned order is justified.

2. The Hon'ble Supreme Court in the case of '*State of Punjab & others Vs. Rafiq Masih (White Washer)*' reported in '*AIR 2015 SC 696*', *inter-alia* held that the recovery of any excess payment made to Class-III or Class-IV employees, as well as recovery from pensioners when such excess payments have been made more than 5 years prior to the demand for refund, the same is impermissible in law.

3. When the aforesaid decision of the Hon'ble Supreme Court is applied to the facts of the present case, the proposed action for recovery through the order impugned in the Writ Petition, would be impermissible *per se*.

4. The learned Single Judge had however taken into account the undertaking given by the appellant that if any audit objection is later

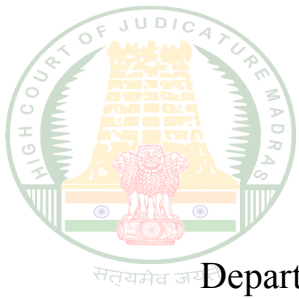


W.A.(MD) No.2685 of 2024

WEB COPY

raised, his pension can be revised accordingly and therefore, refused to interfere with the impugned order. Such a finding of the Writ Court may not be legally sustainable on two grounds. Firstly, the payment, which the respondents claim to have made wrongly, is re-fixation of the appellant's scale of pay for the post of Electrician Grade-I under the Sixth Pay Commission made on 28.05.2014. Admittedly, this payment made by the respondents was not due to any misrepresentation by the appellant. On the other hand, the appellant claims that he was never promoted to the post of Electrician Grade-I and that the re-fixation of his pay under the Sixth Pay Commission was in Grade-II Level. Thus, the appellant had some explanation to render to the respondents for the stand taken by them in the impugned order. However, no prior show cause notice over the contemplated recovery was issued to the appellant, thereby depriving him to put forth his explanation. Thus, the entire action seeking for refund of the alleged excess amount is in violation of the principles of natural justice and hence, the order itself cannot be sustained.

5. Secondly, the Hon'ble Supreme Court, in *White Washer's case* (*supra*), had categorically set forth certain circumstances under which the



W.A.(MD) No.2685 of 2024

WEB COPY

Department would not be entitled to seek for refund of any excess payment, when such payments had been made owing to the fault of the concerned Department. Among the circumstances, recovery from pensioners, Class-III & Class-IV employees and recovery after a period of 5 years when the payments were made, are impermissible.

6. The learned Single Judge, though had referred to a decision of the Hon'ble Supreme Court in *White Washer's case (supra)*, had not discussed the directions therein. Likewise, there is no discussion as to how a mere omnibus undertaking given by the appellant herein would stand as an embargo for applying the ratio in *White Washer's case (supra)*. In the absence of such reasons, the order passed in W.P.(MD) No.13122 of 2018 requires to be set aside.

7. Accordingly, the impugned order dated 09.08.2024 passed in W.P. (MD) No.13122 of 2018 and the proceedings of the sixth respondent dated 06.02.2018 in Na.Ka.No.A1/235/2017, are hereby quashed. Consequently, there shall be a direction to the respondents herein to forthwith disburse all the arrears and other retirement benefits to the appellant, together with



W.A.(MD) No.2685 of 2024

WEB COPY

interest @ 6% p.a. from 31.05.2014 till the date of actual payment, within a period of four (4) weeks from the date of receipt of a copy of this order.

8. With the above directions, the Writ Appeal stands allowed. No costs. Connected miscellaneous petition is closed.

[M.S.R., J] [A.D.M.C., J]

07.01.2025

Speaking/Non-speaking order

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Sni



W.A.(MD) No.2685 of 2024

WEB COPY

To

1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
St.Fort George,
Chennai – 600 009.

2.The Accountant General,
Accountant General Office,
Anna Salai, Chennai.

3.The Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Buildings, Saidapet, Chennai.

4.The Director of Local Fund Accounts and Audit,
571, Anna Salai,
Nanthanam, Chennai.

5.The District Collector,
Nagercoil,
Kanyakumari District.

6.The Commissioner,
Rajakkamangalam Panchayat Union,
Pazhavilai Post,
Kanyakumari District.



WEB COPY



W.A.(MD) No.2685 of 2024

M.S.RAMESH, J.
and
A.D.MARIA CLETE, J.

Sni

W.A.(MD) No.2685 of 2024

07.01.2025