BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.400 of 2025
and
C.M.P(MD)No.3155 of 2025

1.The Director of Adi Dravidar Welfare,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Pay and Accounts Officer,
Egmore East,
Chennai – 600 008.

3.The Sub Treasury Officer,
Manamadurai Sub Treasury,
Manamadurai,
Sivagangai District. ... Appellants/Respondents

vs.

K.Arumugam ... Respondent/Writ Petitioner

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 28.06.2024 made in W.P(MD)No.13856 of 2024 on the file of this Court.

For Appellants : Mr.R.Baskaran
Additional Advocate General
Assisted by
M/s.D.Farjana Ghousia
Special Government Pleader

For Respondent : Mr.S.Visvalingam

JUDGMENT

(Judgment of the Court was delivered by J. NISHA BANU, J.)

The present Writ Appeal is directed against the order passed by the Writ Court dated 28.06.2024 made in W.P(MD)No.13856 of 2024.

2.The respondent/writ petitioner has filed the Writ Petition challenging the proceedings of the first respondent dated 30.05.2023, wherein directed the Pay and Accounts Officer (East) Chennai to deduct the alleged excess payment of salary paid from 2007 to 2020 for a sum of Rs.12,18,121/- from his DCRG amount of Rs.15,56,685/- and disburse the remaining amount of DCRG of Rs.3,38,564/- to the writ petitioner and direct the first respondent to order refund of the amount of Rs.12,18,121/- recovered after three years of retirement.

3.The Writ Court, after considering all the materials available on record, allowed the Writ Petition by setting aside the order of recovery made by the first respondent dated 30.05.2023 and the earlier recovery made between the year 2007 and 2015 and directed the appellants to refund the excess payment and further stated that if for any reason, wrong fixation of pay has got any impact upon the pension payable to the respondent/writ petitioner and the pension of the writ petitioner is to be revised, it is obligatory on the part of the respondents to do the same after putting the writ petitioner on notice and giving an opportunity to make his submissions/objections and thereafter, revise the same. Challenging the same, the respondents as appellants have preferred the present Writ Appeal.

4.The learned counsel appearing for the appellants stated that the Accountant General vide letter dated 17.03.2021 stated that the pay fixed for the writ petitioner at Rs.19,250-5,700/- in the selection grade of P.G Assistant as on 24.09.2007 is not correct and Rs.16,930-5,700/- is the correct pay and as such, this may be revised and the correct last pay drawn of the writ petitioner is Rs.88,700/- and it was wrongly fixed as Rs.99,800/-. Based on the above remarks of the Accountant General, the pay of the writ petitioner was revised by the first respondent vide proceedings dated 17.05.2023. Further, the respondent/writ petitioner has given an undertaking to the first appellant/first respondent in his letter dated 27.05.2022 that as mentioned by the Accountant General, vide letter dated 17.03.2021, to recover the excess amount of pay and other allowances claim and disbursed to the writ petitioner in his DCRG and also to recover the excess amount of Rs.1,09,899/- sanctioned for selection grade for his monthly salary and disbursed the remaining amount. He further submitted that the impugned order has been issued by the first appellant/first respondent based on the remarks of the Accountant General, Chennai and also recovered the excess amount of pay and other allowances claim and disbursed to him from his DCRG and the excess amount sanctioned for selection grade in the cadre of P.G Assistant from his monthly salary and prayed for allowing the Writ Appeal.

5.The learned counsel appearing for the respondent/writ petitioner stated that the recovery has been made after three years of retirement and thus, recovery was impermissible in law and the writ Court has rightly allowed the Writ Petition and prayed for dismissing the Writ Appeal.

6.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7.Perusal of the materials available on record would reveal that the writ petitioner, who was a Headmaster, retired on 29.02.2020. He was sanctioned with pension, commuted pension and DCRG as per the proceedings of the first appellant, dated 17.03.2021. While so, the DCRG was not disbursed to the writ petitioner. Hence, the writ petitioner sent a representation on 13.02.2023. Since there was no reply, he filed a Writ Petition in WP(MD) No.14052 of 2023 and vide order dated 15.06.2023, the writ Court directed the respondents therein to consider the representation and pass orders. Since the said order was not complied with, the writ petitioner has preferred a contempt petition. Pursuant to the same, the first appellant/first respondent passed the order dated 30.05.2023, whereby and whereunder, recovery was made to the tune of Rs.12,18,121/-.

8.It appears from the worksheet of the recovery, the excess payment has not been calculated from the year 2007 to the date of retirement of the writ petitioner during February 2020. The reason assigned for deduction is that the writ petitioner's grade pay has been wrongly fixed in the year 2007 and hence, it has to be reduced and the excess payment so far made to the writ petitioner from 2007 to 2020 can be recovered, pursuant to the undertaking given by the writ petitioner. Obviously the writ petitioner has not suppressed any material facts and he was not instrumental for getting any excess payment. Even the writ petitioner has not given with any opportunity to state whether the fixation has been wrong or right. Unless the writ petitioner is put on notice, he may not be in a position to state that the fixation has been made wrongly.

9.The recovery ought not to have been made in view of the fact that the excess payment resulting in the alleged wrong fixation relates back to the year 2007. When the first recovery was started in the year 2015, it was beyond five years. During which time, the guidelines of the Hon'ble Supreme Court held in ***State of Punjab and others etc., vs. Rafiq Masih*** reported in ***[2014] 13 S.C.R. 1343 (White washer's) case*** was in force. The subsequent recovery has been made without any notice and that are beyond the permissible limit contemplated under the guidelines in the White washer's case.

10.For the sake of clarity, the guidelines are reiterated as under:

“(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.”

11.In fact, the recovery has been made subsequent to the writ petitioner's retirement by stating that he has already given an undertaking. The writ petitioner has not given any undertaking to deduct further Rs.12 lakhs from his terminal benefits. The so called letter of consent given by an employee at the verge of retirement or after two or three years to get the terminal benefits at the earliest, cannot be considered as informed or voluntary consent. Since the recovery is totally against law and impermissible, the writ Court has rightly set aside the impugned order passed by the first respondent.

12.In view of the above, we do not find any illegality or irregularity in the order passed by the Writ Court. Accordingly, this Writ Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

[J.N.B.,J.] & [S.S.Y.,J.]
13.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
ps

To

1.The Director of Adi Dravidar Welfare,
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J.NISHA BANU, J.
and
S.SRIMATHY, J.

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ORDER MADE IN
W.A(MD)No.400 of 2025

DATED : 13.03.2025