

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.25773 of 2014

P.S.Vasanthan

... Petitioner

vs.

1. The Government of Tamil Nadu,
rep. by the Secretary to Govt. Home Dept.,
Fort St.George, Chennai - 600 009.
2. The Director General of Police,
Law & Order & Armed Police,
Police Head Quarters,
Mylapore, Chennai - 600 004.
3. The Addl. Director General of Police,
Armed Police Head Quarters,
Kilpauk, Chennai - 600 010.
4. The Inspector General of Police,
Armed Police Head Quarters,
Kilpauk, Chennai - 600 010.
5. The Commandant,
Tamil Nadu Special Police Battalion-II,
Head Quarters, Avadi,
Chennai - 600 054

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records relating to impugned order of the 5th respondent bearing Na.Ka.No.A4/18977/2010 & Ani Order No.243/2014, dated 28.04.2014 and quash the same and consequently direct the respondents herein to regulate the leave to which the petitioner is due on various dates mentioned in the impugned letter after issuing notice to the petitioner forbear the 5th respondent from ordering the overpayment recovery and consequently direct the respondents to refund to the petitioner a sum of Rs.5770/- which has been recovered from the salary of the petitioner as first installment for the month of August 2014.

For Petitioner : Mr.K.S.Govindaprasad
For Respondents : Mr.S.Gunasekaran,
Additional Government Pleader

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a writ of certiorarified mandamus to call for the records relating to impugned letter of the 5th respondent bearing Na.Ka.No.A4/18977/2010 & Ani Order No.243/2014, dated 28.04.2014 and quash the same and consequently directing the respondents to regularize the period as given in the impugned letter as leave to which the petitioner is eligible and consequently direct the respondents to refund to the petitioner a sum of Rs.5770/- which has been recovered from the salary of the petitioner as first installment for the month of August 2014.

3. It is the case of the petitioner that the petitioner joined service under the Commandant of Police, Tamil Nadu, Special Police, II Battalion, Avadi, Chennai on 10.12.1979 as Class-II Police Constable. Subsequently, he served as driver from 05.09.1981. While so, he was suspended from service on 31.07.1984 and dismissed on 17.04.1985. Against the said dismissal, the petitioner has preferred an appeal in O.A.No.2127 of 1997 before the Hon'ble Tamil Nadu Administrative Tribunal, Chennai and the same was transferred to this Court and renumbered as W.P.No.10773 of 2005. By an order dated 26.04.2005, this Court allowed the writ petition and the operative portion of the order is as follows:

"15. At this juncture, I am of the considered opinion that even back wages from the date of petition till reinstatement cannot be ordered in view of the recent decisions of the Hon'ble Apex Court in (i) U.P.SRTC- Vs- Nithu Singh reported in (2006) 7 SCC 180 and (ii) Banshi Dhar - Vs. State of Rajasthan and another reported in (2007) 1 SCC 324. In as much as mostly on technicalities only this case came to be decided, I do not think that ordering back wages is warranted. Accordingly, reinstatement is ordered without back wages. However, the entire period from the date of their dismissal till the date of reinstatement shall be taken into account as duty period for the purpose of continuity of service and other service and pensionary benefits.

Pursuant to the said order, the petitioner was reinstated into service on 01.08.2008.

4. Thereafter, the petitioner filed yet another W.P.No.3919 of 2011 seeking for promotion with full back wages. This Court by an order dated 17.09.2012 disposed of the same with an observation that the petitioner is not entitled to backwages . That apart, in the said order it was mentioned that the petitioner in case was aggrieved by the decision denying him of the back wages, he shall take up the matter in appeal. Accordingly, the petitioner has filed the Writ Appeal in W.A.No.420 of 2014 challenging the order dated 17.09.2012 made in W.P.No.3919 of 2011 and the said appeal was dismissed.

5. It has been stated in the affidavit that the 5th respondent has issued an impugned letter dated 28.04.2014, wherein he has regularized the leave taken by the petitioner on various dates from 16.10.2010 to 12.02.2014 and the same was issued without any prior notice to the petitioner and further ordered overpayment recovery, which is highly arbitrary, illegal and also violative of principles of natural justice. Hence, the petitioner has come forward with the present petition.

6. The learned counsel for the respondent by filing detailed counter opposed the prayer sought for by the petitioner.

7. The learned counsel for the petitioner by relying on the judgment of the Hon'ble Supreme Court in 2015 (4) Supreme Court Cases 334, wherein it has been stated that

"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 the employees belonging to Class III and Class IV service (or Group C and Group D service).

and submitted that the petitioner, who is Group C employee, the extra payment made to him cannot be recovered .

8. I find some force in the contention of the learned counsel for the petitioner. Hence considering the dictum laid down in the above judgment, the impugned order is liable to be quashed.

9. Accordingly impugned order of the 5th respondent made in Na.Ka.No.A4/18977/2010 & Ani Order No.243/2014, dated 28.04.2014 is quashed and the respondent is directed to refund the recovered amount to the petitioner. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Secretary to Government of Tamil Nadu,
Govt. Home Dept.,
Fort St.George, Chennai - 600 009.
2. The Director General of Police,
Law & Order & Armed Police,
Police Head Quarters,
Mylapore, Chennai - 600 004.
3. The Addl. Director General of Police,
Armed Police Head Quarters,
Kilpauk, Chennai - 600 010.
4. The Inspector General of Police,
Armed Police Head Quarters,
Kilpauk, Chennai - 600 010.
5. The Commandant,
Tamil Nadu Special Police Battalion-II,
Head Quarters, Avadi,
Chennai - 600 054

+ 1 cc t MR.K.S.Govindaprasad, Advocate SR.

W.P.No.25773 of 2014

LRS(CO)
EU 12.11.16