

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2016

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.4468 of 2016
and
W.M.P.Nos.3809 and 3810 of 2016

A.Udayasuriyan

... Petitioner

Vs

1. The District Collector
Tiruppur District
Tiruppur.
2. The Commissioner
Vellakoil Panchayat Union
Vellakoil 638 111
Tiruppur District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the order bearing Roc.No.385/2015/A1 dated 01.02.2016 of the second respondent and to quash the same.

For Petitioner : Mr.V.Suthakar

For Respondents : Mr.P.Chinnadurai
Government Advocate

O R D E R

Mr.A.Udayasuriyan, who is presently serving in the re-designated post of Fitter Grade II in the Tamil Nadu Water Supply and Drainage Board as Special Skilled Assistant Grade II, aggrieved by the impugned recovery order dated 01.02.2016 directing him to pay forthwith a sum of Rs.2,82,616/- has come to this Court seeking issuance of a writ of certiorari to call for the order dated 01.02.2016 issued by the second respondent bearing Roc.No.385/2015/A1 on the ground that the second respondent in one stroke order cannot resort to withhold the

DCRG amount payable to the petitioner as he is due to retire on 29.02.2016, which is squarely covered by the judgment of the Hon'ble Apex Court reported in (2015) 4 SCC 334 [State of Punjab and others vs. Rafiq Mashhi (White Washer) and others. He would further submit that the petitioner is a 'C' grade Government servant and virtually he is not in a position to pay a sum of Rs.2,82,616/- on the verge of his retirement. It is the further contention of the petitioner that he was in service for a quite long time and during that period nothing prevented the second respondent to adopt the method mentioned in the order dated 13.01.2016 by withholding the amount of Rs.2,82,616/- from DCRG and issue No Objection Certificate permitting him petitioner to retire from service on 29.02.2016. Further, he would submit that in view of the law laid down by the Hon'ble Apex Court in the aforesaid decision that recovery, in any form from retired employees or the employees who are due to retire within one year from the date of the recovery order, is impermissible in law, hence, the impugned order is per se running counter to the said dictum and therefore, the same is liable to be set aside.

2. Mr.P.Chinnadurai, learned government advocate appearing on behalf of the respondent after going through the judgment of the Hon'ble Apex Court is unable to support the impugned order since the ratio laid down by the Apex Court is very clear and categorical.

3. Heard both sides.

4. The relevant portion of the judgment passed by the Hon'ble Apex Court reported in (2015) 4 SCC 334 [cited supra], reads as follows:

"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 hereinabove, 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).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

5. In the light of the aforesaid judgment of the Hon'ble Apex Court and also this Court finding full merits on the submission made by the learned counsel for the petitioner, the impugned order is liable to be set aside. Accordingly, the same is set aside.

6. In the result, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector
Tiruppur District
Tiruppur.

2. The Commissioner
Vellakoil Panchayat Union
Vellakoil 638 111
Tiruppur District.

+1cc to Mr.V.Suthakar, Advocate, S.R.No.8346
+1cc to Mr.P.Chinnadurai, Advocate, S.R.No.8309
+1cc to the Government Pleader, S.R.No.8190

W.P.No.4468 of 2016

LRS (CO)
CA(05/04/2016)