

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.5831 of 2016

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the office order bearing No.P2/255(01)/2014-VSP, dated 23-04-2015 passed by the Depot Manager, Visakhapatnam.

Heard, Sri P. Sridhar Rao, learned counsel for the petitioner and Sri S.V. Ramana, learned Standing Counsel for respondents.

According to the petitioner, he was appointed as Mechanic Grade-I on 17-01-1988 and his services were regularized from 10-09-1998 and he was granted special grade increment in the month of August, 2009. The respondent corporation vide proceedings No.P1/255(24)/11-RM/VSP, dated 05-06-2014 upgraded the services of the petitioner. The Depot Manager by way of an office order, dated 23-04-2015 ordered recovery of the alleged excessive amounts paid to the petitioner herein.

The main contention in the present writ petition is that the Depot Manager passed the impugned order of recovery without issuing any show cause notice, calling for explanation and the same is total violation of principles of natural justice.

A counter-affidavit is filed, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

A perusal of the said counter-affidavit clearly shows that there is absolutely no denial of the allegation made by the

petitioner, touching the non-issuance of show cause notice before resorting to the impugned action of recovery.

It is settled and well-established proposition of law that any action, which has civil consequences, shall necessarily be preceded by notice and opportunity of being heard to the persons likely to be affected by such action. In the instant case, the same is conspicuously absent. The said action alone is sufficient to declare the impugned action as illegal and arbitrary.

For the aforesaid reasons, the writ petition is allowed, setting aside the office order bearing No.P2/255(01)/2014-VSP, dated 23-04-2015 passed by the Depot Manager, A.P.S.R.T.C., Visakhapatnam – 3rd respondent herein, keeping it open for the 3rd respondent to issue show cause notice to the petitioner and to proceed, in accordance with law. The said exercise be completed within a period of two (2) months from the date of receipt of a copy of this order. Till a fresh order is passed no further recovery shall be made from the salary of the petitioner. The amounts already recovered pursuant to the impugned order shall be subject to the outcome of the said enquiry.

Miscellaneous Petitions pending, if any, shall stand closed.
There shall be no order as to costs.

A.V. SESA SAI, J

March 16, 2016

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