

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE V. PARTHIBAN

W.P.No.3760 of 2010
and M.P.No.1 of 2010

M.Sellaiyan

Petitioner

Vs

1. The Director of Local Fund Audit
Kuralagam, Chennai 600 108.
2. The Executive Officer,
Nannilam Selection Grade Town Panchayat,
Nannilam, Thiruvarur District.

Respondents

Prayer : - Writ Petition filed under Article 226 of the Constitution of India pleaded to issue a writ of Certiorarified mandamus to call for the records relating to the impugned order of the first respondent in TPV (1)/23726/08 dated 04.07.2008 and the consequential order of the first respondent in Na.Ka.No.44668/Pe O Sa (1)/08 dated 30.01.2009 and quash the said orders and direct the respondents to refund the sum of Rs.1,35,497/- recovered from the petitioner's gratuity with all attendant benefits.

For Petitioner : Mr.P.Manoj Kumar

For Respondents : Mr.K.Prakash for R2

O R D E R

The prayer in the writ petition is to issue a writ of certiorarified mandamus to call for the records relating to the impugned order of the first respondent in TPV (1)/23726/08 dated 04.07.2008 and the consequential order of the first respondent in Na.Ka.No.44668/Pe O Sa (1)/08 dated 30.01.2009 and quash the said orders and direct the respondents to refund the sum of Rs.1,35,497/- recovered from the petitioner's gratuity with all attendant benefits.

2. The case of the petitioner is as follows:-

The petitioner was appointed as Lineman on 22.07.1978 and working under the control of the second respondent and had attained the age of superannuation and retired on 30.04.2008. After retirement of the petitioner, the first respondent issued the proceedings in TPV (1)/23726/08 dated 04.07.2008, which is impugned in the present writ petition allowing pension to the petitioner but withholding the gratuity payable to him. According to the communication, there has been a wrong fixation of pay while the petitioner was in service in the year April 1992 to April 2008. However, such wrong fixation of pay scale has not been disclosed to the petitioner.

3. Subsequently it appears that some portion of the gratuity payable to the petitioner has been withheld to the tune of Rs.1,35,497/- and balance amount of Rs.46,423/- has been released towards gratuity. At this stage the petitioner represented that he was not aware of the wrong fixation of scale during his period of service and therefore withholding of the gratuity is illegal and unjust and cannot be countenanced in law or on fact. Since no orders were issued in response to the representation of the petitioner, he has now approached this Court seeking the relief as stated supra.

4. The learned counsel for the petitioner submitted that as far as his knowledge the petitioner had not been paid any excess payment during the period from April 1992 to April 2008, due to wrong fixation of scale as no detail has been disclosed to the petitioner. Therefore there was no need to withhold the gratuity payable to the petitioner. The so called excess payment said to have been paid to the petitioner has not been disclosed to the petitioner at any point of time and he further submitted that the petitioner was not aware of the wrong fixation said to have been paid from April 1992 to April 2008, in view of the complete absence of any detail being furnished to him. More over he would rely upon the recent decision of the Hon'ble Supreme Court of India in the case of State of Punjab and others Vs Rafiq Masih (White Washer) reported in (SC) 2015 (5) CTC 455 which is held as follows:-

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 Employees belonging to Class-III & IV service (or Group 'C' & '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. "

5. According to the learned counsel for the petitioner, the so called excess payment for the period from 1992 to 2008 which is for a period of more than five years has been recovered from his gratuity after his retirement in the year 2008. Therefore the petitioner's case is fully covered under paragraphs 1 & 3 as stated supra. Even otherwise the learned counsel would emphasise the fact that no notice was given to the petitioner and no basis of such so called excess payment has been disclosed at any point of time to the petitioner.

6. Heard both sides.

7. Considering the counter argument of the Special Government

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Pleader for the respondents, this Court has no hesitation in accepting the contention of the learned counsel for the petitioner. The impugned order is therefore illegal and unjust and the same cannot be allowed to stand. Therefore in the above circumstances the impugned order is set aside and the writ petition is allowed. There shall be a direction to the first respondent to release the withheld gratuity amount payable to the petitioner to the tune of Rs.1,35,497/- within a period of two weeks from the date of receipt of a copy of this order. Payment shall carry interest of 9% p.a., from the date of payment till the date of realisation.

8. Accordingly this writ petition is allowed. No costs. Connected miscellaneous petition is also closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Director of Local Fund Audit
Kuralagam, Chennai 600 108.
2. The Executive Officer,
Nannilam Selection Grade Town Panchayat,
Nannilam, Thiruvarur District.

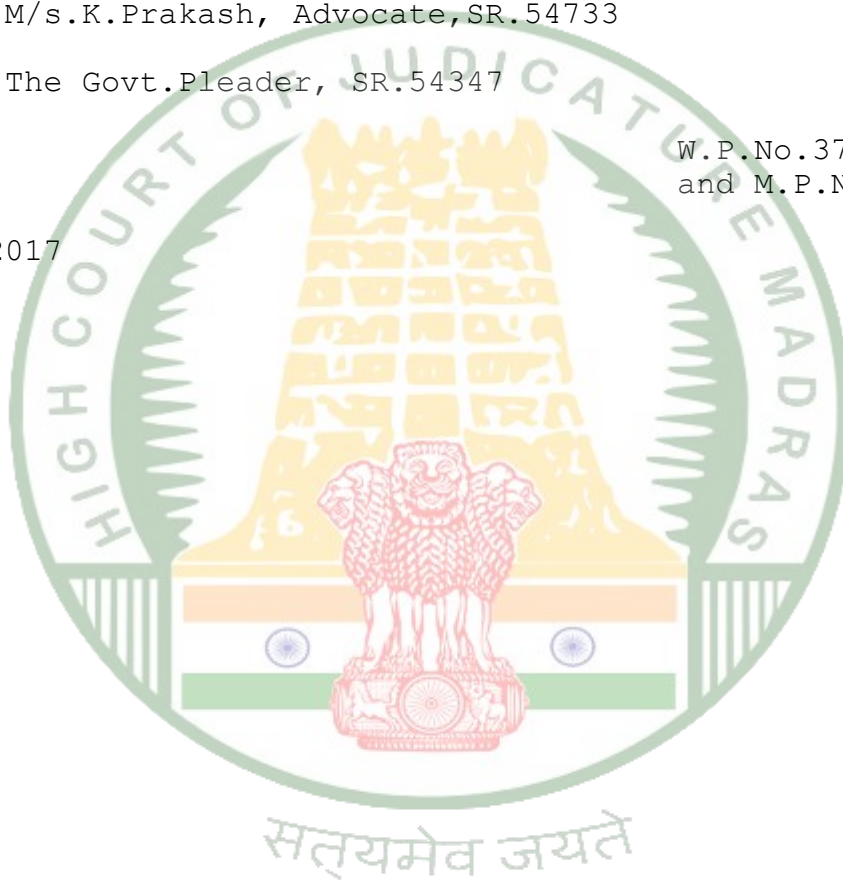
+ 1 cc to M/s.P.Rajendran, Advocate, SR.54828

+ 1 cc to M/s.K.Prakash, Advocate, SR.54733

+ 1 cc to The Govt.Pleader, SR.54347

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