

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

WP.No.760 of 2013

K.Rajendra Babu

...Petitioner

Versus

- 1.The Accountant General (Accounts & Entitlements) Tamilnadu,
No.361, Anna Salai,
Chennai - 600 018
 - 2.The Deputy Director,
Information & Publicity Department,
Fort St. George,
Chennai District - 600 009
 3. The Assistant Works Manager,
Tamilarasu Press, No.110, Anna salai,
Chennai District - 600 002
- ...Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the entire records relating to the second respondent in his proceeding No.227/E1/THA.Aa/11 dated 16.08.2012 and to quash the same as illegal and consequently directing the respondents to refund the deducted amounts of Rs.65,212/- from the petitioner's retirement benefits and further direct the respondent to re-fix the scale of pay for the post of junior binder and subsequent fixation and to fix 5% Personal pay to the petitioner by extending the benefit of G.O.Ms.No.176 Finance Department dated 30.04.2009 within a time frame.

For Petitioner : M/s.S.A.Manisha Kirthika
For Respondents : Mr.S.Balaji for R1
Mr.K.Dhananjayan, Spl.GP for
R2 & R3

ORDER

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

2 The petitioner was initially appointed as Mazdoor on 14.04.1977 and got his further promotions and retired as Special Grade Junior Binder on 31.05.2011. The petitioner would state that he was paid salary in the basic pay scale of Rs.505-10-555-615-795-845 and in pursuant to G.O.Ms.No.664, Finance [Pay Cell] Department, dated 24.08.1992 by which 5% personal pay added to basic pay from 01.08.1992 and was granted to certain categories of employees and the petitioner is also one among the employees. The petitioner would further aver that as per G.O.Ms.No.742, Finance Department of the year 1986, his pay scale was modified and so also in terms of G.O.Ms.No.536 and 418 of the same Department dated 08.10.1997 and 21.08.1998 respectively. It is the claim of the petitioner that the pre-revised scale of the Imposer / Junior Binder was Rs.1100-1610 and subsequently, it was revised as Rs.9120-2040 and since the petitioner is coming under four categories stipulated under G.O.Ms.No.573, Finance Department, dated 01.08.1992, he is also entitled of the said benefits. However, the petitioner, to his shock and surprise, was issued with the impugned order by the 2nd respondent stating that since the excess amount has been paid as per the altered pay scale, 5% Personal Pay granted to him between 01.08.1992 to 01.09.1998, has been cancelled and it will be recovered from the Gratuity and challenging the legality of the said order, the petitioner came forward to file the present writ petition.

3 M/s.S.A.Mahisha Karthika, learned counsel appearing for the petitioner would submit that with regard to the alleged excess payment, the petitioner is no way responsible and no opportunity, whatsoever, has been afforded to the petitioner and on account of the recovery effected, the petitioner, who is a pensioner, now aged about 64 years, would be put to irreparable and grave hardship and prays for interference.

4 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents 2 and 3 would submit that by way of excess pay received by the petitioner, there was an unjust

enrichment in favour of the petitioner and in order to realise the same, the impugned order of recovery came to be passed.

5 The Court heard the submissions of Mr.S.Balaji, learned counsel for the 1st respondent and perused the materials placed before it.

6 The Hon'ble Apex Court in the decision reported in 2015 [4] SCC 334 [State of Punjab and others Vs. Rafiq Masih [White Washer] and others], has considered the issue relating to the recovery of amount paid in excess without the fault of receipient and sought to balance the conflicting claims.

7 It is relevant to extract paragraph No.18 of the said judgment [cited supra]:-

"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:-

[1] Recovery from the employees belonging to Class III and Class IV service [or Group C and Group D service].

[2] Recovery from the retired employees or the employees who are due to retire within one year, of the order of recovery.

[3] 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.

[4] 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.

[5] 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."

8 Admittedly, the petitioner has not played any role with regard to the alleged excess pay and he is retired from service on 31.05.2011 and without affording any reasonable and adequate opportunity, the impugned order of recovery came to be passed effecting recovery from the Gratuity. The Hon'ble Apex Court in the above cited decision, has held that the recovery of amount from the retired employees or employees who are due to retire within a period of one year, the order of recovery is impermissible in law.

9 In the light of the factual aspect and legal position, this Court is of the considered view that the impugned order of recovery warrant interference.

10 In the result, the writ petition is partly allowed and the impugned order passed by the 2nd respondent dated 16.08.2012 in proceedings No.227/E1/Tha.Aa/11 is hereby quashed and as a consequence, the 2nd respondent is directed to pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order, for refunding the recovered amount to the petitioner. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

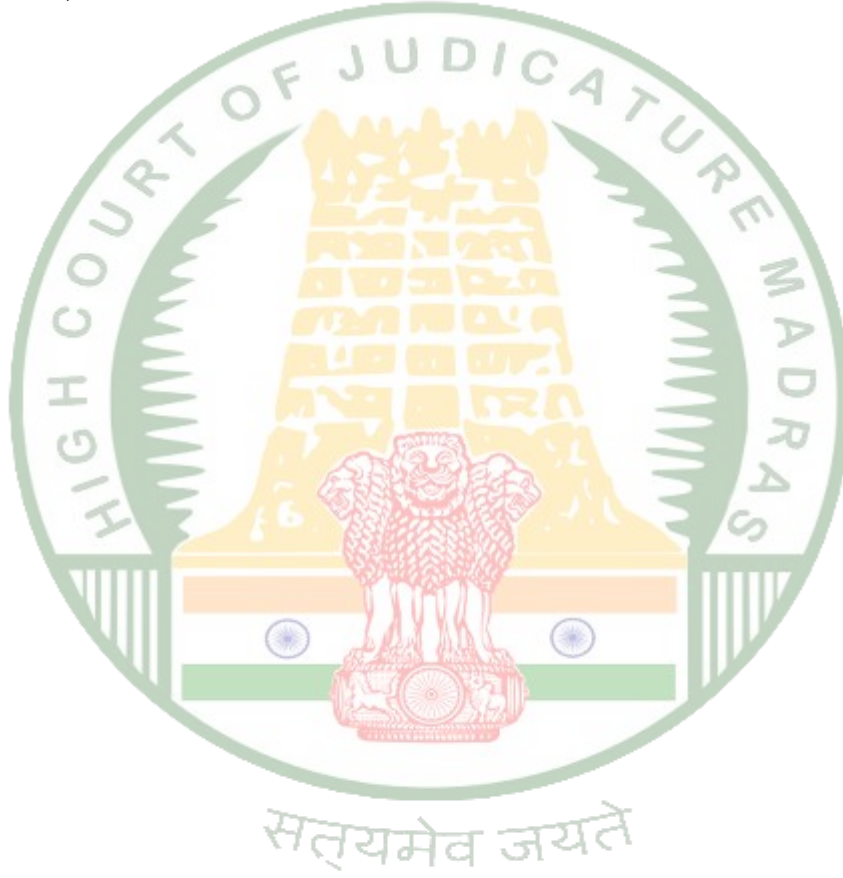
To

- 1.Accountant General, (Accounts & Entitlements)
Office of the Accountant General,
Teynampet, Chennai 600 018
- 2.The Deputy Director,
Information & Publicity Department,
Fort St. George,
Chennai District - 600 009
3. The Assistant Works Manager,
Tamilarasu Press, No.110, Anna salai,
Chennai District - 600 002

+1cc to Mr.S.Balaji , Advocate, S.R.No.26028
+1cc to Mr.S.A.Mahisha Kirthika, Advocate, S.R.No.25827
+1cc to the Government Pleader, S.R.No.26422

WP.No.760/2013

KJI (CO)
RS (12/05/2017)



WEB COPY