IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.05.2017

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THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.30780 of 2003
and WMP.No.37524 of 2003

T.Palaniappan .. Petitioner

Versus

1.The Project Director i/c,
Tamil Nadu State Blindness Control Society,
Chennai-8.

2.The Special Commissioner and
Commissioner of Treasuries and Accounts,
Chennai-15.

3.The Commissioner of Labour,
Chennai-6. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus, to call for the records of the proceedings in R.C.No.2644/Acct./Soc.2/dated 11.11.2002 on the file of the 1st respondent and consequential proceedings in R.C.No.63566/02/A2 dated 27.12.2002 on the file of the 2nd respondent and H1/53566/2002 dated 22.05.2003 and 11.07.2003 on the file of the 3rd respondent and to quash all the above proceedings in so far as which is sought to recover deputation allowance paid to the petitioner for the period from 05.08.1998 to 23.12.2000 by the 1st respondent. Consequently direct the 2nd and 3rd respondents to release the Death cum Retirement Gratuity [DCRG] payable to the petitioner on his superannuation on 31.12.2002. To issue suitable directions to the 3rd respondent to release the Death cum Retirement Gratuity [DCRG] payable to the petitioner on his superannuation on 31.12.2002 leaving the sum of Rs.53,057/- to be deposited in Fixed Deposit in any nationalised bank pending disposal of the main writ petition.

For Petitioner : Mr.N.S.Nandakumar
For Respondents : Mr.K.Dhananjayan
Special Government Pleader

ORDER

The writ petitioner entered into the services of the respondent department as Upper Division Storekeeper and subsequently, arose to the cadre of Accounts Officer, with effect from 05.08.1998. On account of his promotion as Accounts Officer, the writ petitioner was deputed to the office of the Project Director, Tamilnadu State Blindness Control Society and thereafter retired on attaining the age of superannuation on 31.12.2002.

2. The present writ petition is filed challenging the recovery order passed by the respondents to recover the deputation allowance granted to the writ petitioner. As per the counter filed by the respondents, the writ petitioner was not entitled for any deputation allowances and it was erroneously granted and the writ petitioner also had received the same. No fact was placed before this Court showing that the writ petitioner had made any misrepresentation and claimed the said amount of deputation allowances. Infact the deputation allowances was granted to the writ petitioner by the office of the respondents, for which the writ petitioner cannot be blamed.

3. Though the writ petitioner has retired from service in the year

2002, till date, his other terminal benefits are also not paid. The action of the respondents ought to be deprecated and even in that case, the respondents ought to have withheld the disputed amount and disbursed the balance amount of terminal benefits. Contrarily, they have withheld the entire amount for which they have no reason or authority. The pensionary benefits are the livelihood of the government employees and after serving for about two decades or more, the employees are retiring only under the pretext that they could lead their retired life with the assets of the retiral benefits. Such being a normal expectation of any government employee the authorities must be cautious while withholding the entire amount of termination benefits. Since the pensionary benefits and pension are not bounty and it is a deferred portion of wages and further it is the property right of a government employee, it cannot be withheld and denied to the public servant.

4. It is useful to cite the authoritative pronouncement of the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq, Masih (White Washer)*** reported in **2015 (4) SCC 334**, wherein at paragraph No.18, the Hon'ble supreme Court has carved out the principles relating to the imposition of recovery, which is extracted hereunder.

> *"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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group '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."

Accordingly, a recovery cannot be imposed from a retired employee. Furthermore, the said amount of deputation allowance was paid not by way of misrepresentation by the writ petitioner and therefore, the writ petition deserves consideration and accordingly, the orders passed by the respondents are quashed and the writ petition stands allowed and the respondents are directed to pay the entire terminal benefits along with the interest as admissible under the rules, if not already paid, within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

05.05.2017

Index:Yes/No
Internet:Yes/No
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To

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Tamil Nadu State Blindness Control Society,
Chennai-8.

2.The Special Commissioner and
Commissioner of Treasuries and Accounts,
Chennai-15.

3.The Commissioner of Labour,
Chennai-6.

S.M.SUBRAMANIAM.J,

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