

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.10915 of 2011

R.Ganesha Rao

... Petitioner

vs.

1.Tamil Nadu Civil Supplies Corporation
Rep. By its Managing Director,
No.12 Thambusamy Road
Kilpauk, Chennai - 600 010.

2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thanjavur Region, Thanjavur.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus, to call for the records on the file of the second respondent relating to impugned order dated 21.08.2009 bearing ref. Na.Ka.No.A6/22736/07 and quash the same and consequently direct the respondents to refund the sum of Rs.1,14,915/- with interest at the rate of 24% per annum from 12.11.2009 till date of disbursement.

For Petitioner : Mr.Illanthirayan
for Mr.Sai Bharath

For Respondents : Mr.L.P.Shanmugasundaram,
Special Government Pleader

O R D E R

Heard Mr.Illanthirayan, learned counsel for the petitioner and Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in Na.Ka.52623/Putha II/Iru2/2011, dated 13.06.2011 and quash the same and further direct the respondents 1 to 3 to appoint the petitioner to the permanent post of Mazdoor lying vacant with the respondents."

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

The petitioner worked as Special Grade Boiler Operator under the Tamil Nadu Civil Supplies Corporation. On attaining the age of superannuation, he retired from service on 31.01.2008. Since the gratuity amount was not paid, the petitioner approached the second respondent on several times. Ultimately, the second respondent passed an order directing recovery of a sum of Rs.1,14,915/- from the retirement benefits of the petitioner on account of the alleged excess payment of salary during the period of his service.

4. The petitioner was in service under the respondents till 31.01.2008. The respondents have no case that the petitioner was instrumental in fixing his pay. Similarly, the respondents have no case that on account of his misrepresentation, he was given excess salary. It was only by way of the impugned order, the second respondent has come up with a case that a sum of Rs.1,14,915/- was paid to the petitioner in excess of the actual entitlement. In case the respondents have wrongly fixed the pay, nothing prevented them from refixing the pay scale during the service period. It was only when the petitioner called upon the second respondent to release his gratuity amount, the second respondent has passed the impugned order directing recovery of a sum of Rs.1,14,915/- from the amount payable to him. So long as the respondents have no case that the petitioner was primarily responsible for fixing the pay scale to the petitioner, they are not entitled to recover the amount. Therefore, I am of the view that the second respondent was not justified in passing the impugned order.

5. In fact, the Hon'ble Supreme Court of India in its decision in the case of State of Punjab and others Vs. Rafiq Masih and others, reported in (2015) 4 SCC 334, has held in paragraph No.18 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 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."

6. The issue raised in the present writ petition is squarely covered by the decision of the Hon'ble Supreme Court of India, since there was no misrepresentation on the part of the petitioner, facilitating the payment of higher salary due. In the said circumstances, the departmental action for recovery of Rs.1,14,915/- is without justification and the same cannot be countenanced in law.

7. In the result, the impugned order in ref. Na.Ka.No.A6/22736/07, dated 21.08.2009, passed by the second respondent is set aside. The second respondent is directed to refund the amount Rs.1,14,915/- to the petitioner as expeditiously as possible and in any case, within a period of two months from the date of receipt or production of a copy of this order.

8. With the above direction, the writ petition is allowed as indicated above. No costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12 Thambusamy Road
Kilpauk, Chennai - 600 010.

2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thanjavur Region, Thanjavur.

+1cc to Mr.L.P.ShanmugaSundaram Advocate SR.No.21745

+1cc to Mr.Sai Bharath & Ilan Advocate SR.No.21359

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SDR 11.04.2018



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