

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.01.2018

Pronounced on : 01.3.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1753 of 2015

C.Subramanian

... Appellant

Vs.

1. The Divisional Forest Officer/
District Forest Officer,
Athur Division, Athur.

2. The Principal Chief Conservator of Forests,
Panagal Buildings, Saidapet,
Chennai - 15.

... Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 29.11.2012 passed by by this Court in W.P.No.31822 of 2012, dismissing the writ petition.

W.P.No.31822 of 2012:

Writ Petition is preferred under Article 226 of the constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records relating to the 1st respondent impugned order made in Se. Mu. Aa. No. 6805/2011 Pa. 1 dt 9.11.2011 to quash the same and consequently direct the respondents to repay/refund the alleged excess amount with interest at 18% per annum till the date of refund.

For appellant : Mr.L.Chandrakumar

For Respondents: Mr.M.Santhanaraman

Additional Government Pleader (Forest)

JUDGMENT

P.VELMURUGAN, J.

The writ appeal is filed against the order dated 29.11.2012, made in W.P.No.31822 of 2012.

2 The brief facts of the appellants' case in the writ petition are as follows :-

The appellant was working as an Assistant Conservator of Forest at Athur. At the time of implementation of VI Pay Commission, the salary of the appellant was fixed in the scale of pay of Rs.15600-39100 + 5700 and he was fitted at Rs.25300 + 5700/-. However he was paid salary at the rate of Rs.31000 + 5700/- during March 2010 to June 2010 and Rs.32110 + 5700/- from July 2010 to February 2011. Later on the said mistake was noticed and the District Forest Officer, Athur Forest Division, passed an order dated 09.11.2011, to recover the excess payment from the appellant.

3 Aggrieved over the said order dated 09.11.2011, the appellant filed W.P.No.31822 of 2012, praying to quash the impugned order and consequently to direct the respondents to re-pay the amount which was recovered from him.

4 The learned Single Judge after considering the rival submissions made on either side, dismissed the writ petition on 29.11.2012, by citing the observations of the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal and others vs. State of Uttarakhand and others reported in (2012) 8 SCC 417.

5. Aggrieved by the dismissal order dated 29.11.2012 made in W.P.No.31822 of 2012, the appellant has preferred the present writ appeal.

6. The learned counsel for the appellant would submit that the petitioner was working as an Assistant Conservator of Forest at Athur. Pursuant to the recommendations of the VI Pay Commission, the appellant was paid salary at the rate of Rs.31000 + 5700/- during March 2010 to June 2010 and Rs.32110 + 5700/- from July 2010 to February 2011. All of sudden, the first respondent passed an order dated 09.11.2011, to recover a sum of Rs.96,091/- from the appellant's salary in four instalments and the same was also recovered.

6.1 The learned counsel further contended that the appellant has neither made any misrepresentation nor committed any fraud for getting excess payment from the department and the appellant had already attained the age of superannuation on 29.02.2012. Therefore the excess payment paid to him cannot be recovered at the verge of his retirement. He has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of State of Punjab & Others etc., vs. Rafiq Masih (White Washer) etc., in Civil Appeal Nos.11527 of 2014 etc., batch. The relevant portion of the order is extracted as follows:

"12. 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, summaries 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 rightly 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."

According to the learned counsel, the learned single Judge has failed to consider the legal proposition and dismissed the writ petition and the same warrants interference.

7. The learned Additional Government Pleader (Forest) appearing for the respondents would submit that pursuant to the recommendations of VI Pay Commission, the scale of pay of the appellant was raised from Rs.15600-39100+5700 to Rs.25300+5700/. However at the time of implementation of the recommendation of IV Pay Commission, the appellant was paid salary at the rate of Rs.31000 + 5700/- during March 2010 to June 2010 and Rs.32100+5700/- from July 2010 to February 2011. Such fixation is contrary to the recommendations made by the IV Pay Commission. Later on, when it was found that the excess amount was mistakenly paid, the first respondent issued an order of recovery dated 09.11.2011 for recovery of Rs.96,091/- from the salary of the appellant in four instalments. The learned Single Judge has rightly considered the case of the appellant and dismissed the writ petition. There is no merit in the appeal and hence he prayed for dismissal of the writ appeal.

8. We have carefully considered the rival submissions made on either side and perused the materials available on record.

9. It is not in dispute that the appellant was working as Assistant Conservator of Forest at Athur. It is also not in dispute that the appellant was receiving the salary at the scale of pay of Rs.15600-39100+5700. Pursuant to recommendation of the VI Pay Commission he was entitled to the scale of pay of Rs.25300+5700. The appellant was paid salary at the rate of Rs.31000 + 5700/- during March 2010 to June 2010 and Rs.32100+5700/- from July 2010 to February 2011. The learned counsel for the appellant has admitted that the appellant was paid a sum of Rs.96,091/- in excess. The only contention is that there was no misrepresentation or fraud played by the appellant. The said excess amount of Rs.96,091/- was recovered from the salary of the appellant in four instalments. Admittedly, in the present case, the mistake committed by the department was noted later and recovery order was also passed within a period of one year. Under these circumstances, the contention of the appellant is not acceptable.

10. In view of the above discussion, we are of the considered view that there is no merit in the appeal. The order of the learned Single Judge dated 29.11.2012 made in W.P.No.31822 of 2012 does not warrant any interference.

11. In the result the writ appeal stands dismissed. No order as to costs.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Chief Conservator of Forests,
Panagal Buildings, Saidapet,
Chennai - 15.
2. The Divisional Forest Officer/
District Forest Officer,
Athur Division, Athur.

+1 CC to The Spl. Govt. Pleader(Forest) sr 15760.
+1 CC to Mr.L. Chandrakumar, advocate sr 15832.

W.A.No.1753 of 2015

PA (CO)
SP (28/03/2018)



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