

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P. VELMURUGAN

W.A.No.694 of 2016
and
CMP No.9116 of 2016

1. The Chief Engineer,
Agricultural Engineering Department,
Nandanam, Chennai - 600 035
 2. The Executive Engineer,
Agricultural Engineering Office,
Thiruvallur District
 3. The Assistant Executive Engineer,
Agricultural Engineering Office,
Ponneri, Thiruvallur District
- Appellants
- vs-
- D. Murugesan Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.15988 of 2011 dated 13.10.2011.

W.P.No.15988 of 2011:

The Writ Petition is filed under Article 226 of the constitution to issue a Writ of Certiorari to call for the records of the third respondent in proceedings No.A/1689/2010 dated 21.12.2010 for recovery of excess scale of pay in selection grade from the petitioner and quash the above said proceedings.

For Appellants : Ms.A. Sri Jayanthi
Spl.G.P

For respondent : Mr.V. Bhiman

JUDGMENT

[Judgment of the Court was delivered by
K.K. SASIDHARAN, J.]

The intracourt appeal is directed against the order dated 13 October 2011 in WP No.15988 of 2011, whereby and where under, the learned Single Judge quashed the order dated 21.12.2010 directing recovery of the alleged excess payment made to the respondent.

2. Heard the learned Special Government Pleader on behalf of the appellant. We have also heard the learned counsel for the respondent.

3. The respondent was initially appointed as Assistant Driller. Subsequently, he was promoted as Driller on 16.03.2002. While he was working as Driller, a proposal was sent for awarding Selection Grade with effect from 16.03.2002. The said proposal was considered by the competent authority and accordingly, his scale of pay was fixed as 5000-150-8000. The respondent was paid the revised salary till the year 2010.

4. While so, pointing out the objections raised by the Audit, the Assistant Executive Engineer, the third appellant herein, initiated proceedings for recovery. The order, directing recovery, was challenged by the respondent primarily on the ground that he was not responsible for the fixation of pay. According to the respondent, the salary was paid to him, pursuant to the fixation made by the competent authority and therefore, it was not permissible to direct recovery of the alleged excess during the verge of retirement.

5. The learned Single Judge, having found that the respondent was in no way responsible for fixation of salary, quashed the impugned order. The failure to issue notice to the respondent before passing the order involving civil consequences was also taken as a ground to quash the order. Feeling aggrieved, the State has come up with the intracourt appeal.

6. There is no dispute that the respondent was not responsible for fixation of his Selection Grade pay. It is a matter of record that the Selection Grade was given with effect from 16.03.2002. There was no action taken by the appellants within a reasonable time to reverse the order and to recover the alleged excess. It was only during the time of retirement, the appellants initiated action for recovery.

7. The Hon'ble Supreme Court in State of Punjab and Others vs Rafiq Masih and others (2015 (4) SCC 334) considered the

earlier judgments with regard to the right of the State to recover the amount without any fault of the concerned employee and ultimately declared the law in the following words:

" 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:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) 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.

(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.

8. The case of the respondent would be covered by Sub Clause 1 and 3 of the observations made by the Hon'ble Supreme Court in *State of Punjab and Others vs Rafiq Masih and others* supra and more particularly, as indicated in paragraph-18 of the judgment extracted above.

9. We are therefore, of the view that there is absolutely no merit in the contention taken by the appellants.

10. In the upshot, we dismiss the intracourt appeal.

11. The learned Single Judge has already directed the appellants to refund the amount, recovered from the respondent. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected CMP is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

sr

To

1. The Chief Engineer,
Agricultural Engineering Department,
Nandanam, Chennai - 600 035
2. The Executive Engineer,
Agricultural Engineering Office,
Thiruvallur District
3. The Assistant Executive Engineer,
Agricultural Engineering Office,
Ponneri, Thiruvallur District

+1 CC to Mr.V. Bhiman, advocate sr 4751.

+1 CC to The Govt. Pleader sr 4820.

सत्यमेव जयते

W.A.No.694 of 2016

BR(CO)
SP(15/02/2018)

WEB COPY