

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25012 of 2006

And

M.P.No.1 of 2006

K.George

... Petitioner

Vs.

The Principal
Chengalpattu Medical College,
Chengalpattu.

... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records connected with the proceedings issued in Na.Ka.No.5319/Ka4/2006 dated 08.06.2006 passed by the respondent and quash the same.

For Petitioner : Mr.S.Ilamvaludhi

For Respondent : Mr.K.Ravikumar

Additional Government Pleader

O R D E R

The petitioner has filed this petition challenging the order of recovery dated 08.06.2006.

2.The case of the petitioner is that he joined the service as Grade II Lab Technician in the year 1969 and thereafter promoted as Grade I Lab Technician in the year 2001 and was given selection grade vide proceedings of the respondent dated 16.03.2001 and his scale of pay was fixed as 5500 - 175 - 9900. The petitioner retired from service on 31.05.2005 and he was permitted to draw the same scale of pay till the date of his retirement. Thereafter, on 04.04.2006 the respondent issued a recovery proceedings stating that at the time of awarding selection grade, his scale of pay was fixed wrongly. Thereafter, the respondent issued the proceedings dated 08.06.2006 which is impugned in this writ petition directing the petitioner to remit an amount of Rs.14,851/- immediately. Hence, this writ petition.

3.The learned counsel appearing for the petitioner would submit that though the petitioner retired from service on 31.05.2005, the respondent without any notice or proceedings and without due process of law has passed the impugned order of recovery against the petitioner on 08.06.2006. Hence, the impugned

order is un-sustainable, in view of the decision of the Hon'ble Apex Court, reported in (2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others, the relevant portion of which, reads as follows:

"10. In view of the aforesaid constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the state, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

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 on 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 when 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.

4. The decision cited supra squarely applies to the present case on hand and hence, this Court extends the benefit granted by the Hon'ble Apex Court to this petitioner. Accordingly, the writ petition is allowed. No Costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

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To

The Principal
Chengalpattu Medical College,
Chengalpattu.

+1 cc to the Government Pleader, High Court, Chennai SR.NO. 32317

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W.P.No.25012 of 2006

And

M.P.No.1 of 2006

MG (CO)
JK 18/05/18

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