

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.NO.31689 OF 2018

AND

W.M.P.NO.36932 OF 2018

1.Union of India rep. by
The General Manager,
Southern Railway,
Park Town, Chennai - 3.

2.The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai - 3.

3.The Divisional Personnel Officer,
Southern Railway,
DRM Office Complex,
Tiruchirapalli - 620 001.

... Petitioners

Vs

1.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

2.T.Somasundaram

3.P.Tamilarasan

4.A.Chelladurai

5.V.Mohandoss

6.S.Pattabiraman

7.G.Napoleon

8.P.M.Sampath Kumar

9.S.Santhanam

10.D.Chockalingam

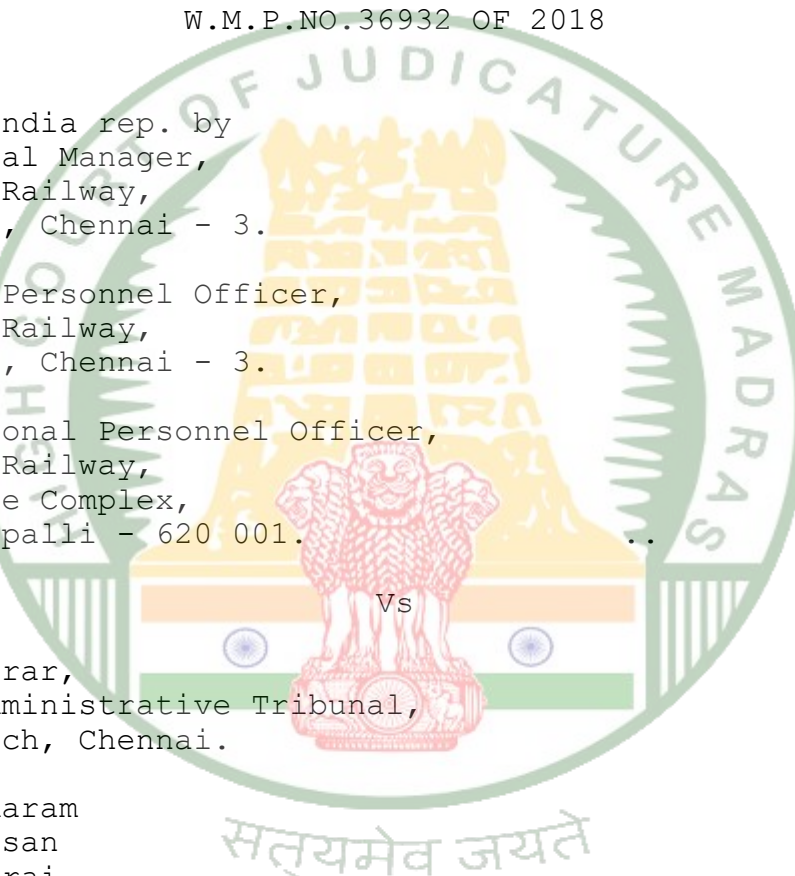
11.P.Sivasankar

12.A.L.Solai

13.R.Logithasan

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Respondents



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Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records from the Central Administrative Tribunal, Chennai in O.A.No.310/01702/2015 and quash the impugned order dated 16.12.2016.

For Petitioners .. Mr.P.T.Ramkumar
For Respondents .. R1 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The private respondents viz., respondents 2 to 13 were given third financial upgradation while working as Senior Draftsmen. The aforesaid financial upgradation was unilaterally withdrawn by order dated 23.04.2015. Despite the representation made, it was not reviewed and hence respondents 2 to 13 approached the Tribunal.

2.The Tribunal allowed the Original Application inter alia holding that inasmuch as the private respondents were not responsible for the situation, no recovery can be made through the impugned order. Challenging the same, the present writ petition has been filed.

3.Heard the learned counsel appearing for the petitioners.

4.Considering the very same issue, this Court in Union of India and Others Vs. The Registrar, Central Administrative Tribunal, Chennai and Others (2017-1 Writ L.R. 321), was pleased to hold as follows:

"9. Contentions of the learned counsel for the writ petitioners that cumulative effect of all clauses in paragraph no.18 of the reported judgment, ought to have been considered by the tribunal, cannot be countenanced, in the light of paragraph no.19 of the said judgment wherein, the Hon'ble Supreme Court has considered that the respondents therein were employees in Class III and Class IV service (or Group C and Group D service). Paragraph Nos.18 and 19 of the said judgment are 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.

19. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above. "

5. The aforesaid order was put into challenge before the Apex Court and the special leave petition was also dismissed. Thus the issue sought to be raised is no longer res integra.

Respondents 2 to 13 are also similarly placed as that of the respondents before the Division Bench (referred supra).

6.In such view of the matter, we do not find any merit in the writ petition and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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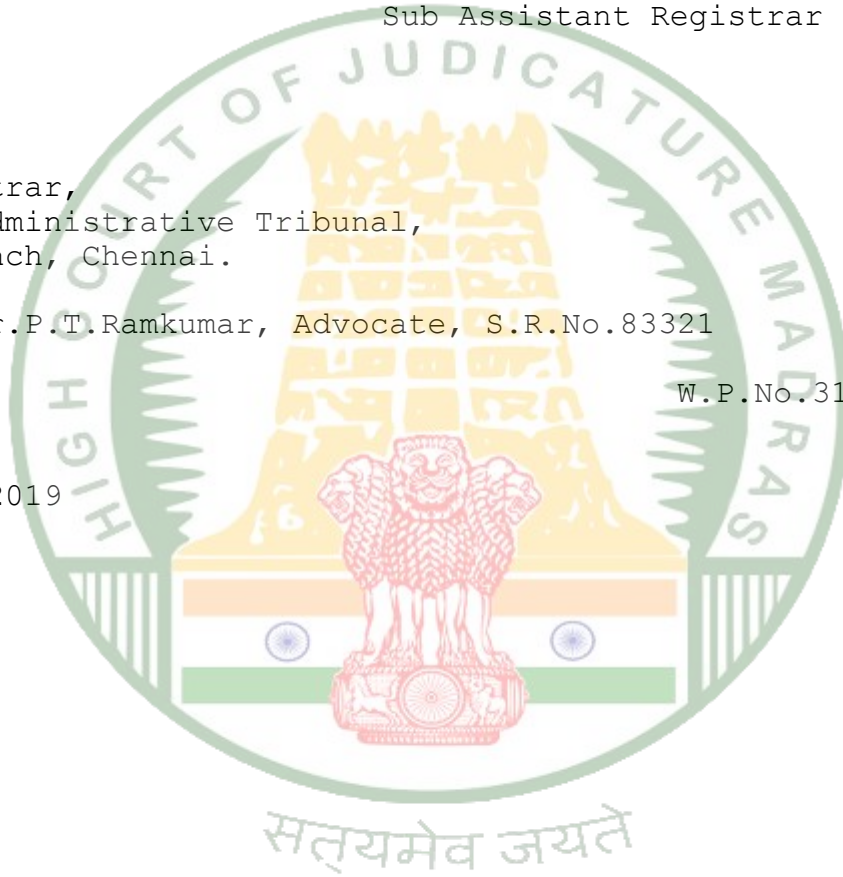
To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.83321

W.P.No.31689 of 2018

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CS/03/01/2019



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