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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A(MD)No.319 of 2015
and
M.P(MD)No.1 of 2015

1. The Director of Public Health and
Preventive Medicine,
No.359, Anna Salai,
Chennai - 600 006.

2. The Block Medical Officer,
Government Primary Health Centre,
Veerapandi,
Theni District.

... Appellants/Respondents

Vs.

M.Kandasamy

... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 03.04.2014 made in W.P(MD)No.8895 of 2012, on the file of this Court.

Prayer in WP(MD). 8895/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI FIED MANDAMUS, calling for the records relating to R.No.159/PH/2011, dated 12-07-2011 of the second Respondent namely the Block Medical Officer, Government Primary Health Centre, Veerapandi, Theni District and quash the same and consequently direct the Respondents to refund the amount of Rs.62,150/- recovered from the DCRG of the Petitioner within a stipulated time frame that may be fixed by this Honourable High Court.

For Appellants : Mr.A.K.Baskara Pandian,
Special Government Pleader.

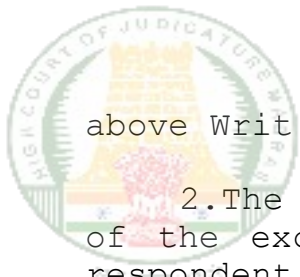
For Respondent : Mr.S.Viswalingam

JUDGMENT

(Judgment of the Court was delivered by M.DURAI SWAMY,J.)

<https://hcservices.ecourts.gov.in/hcservices/>

Challenging the order, dated 03.04.2014 passed in W.P(MD) No.8895 of 2012, the respondents in the Writ Petition have filed the



above Writ Appeal.

2.The issue involved in the Writ Petition is as to the recovery of the excess amount made by the appellants/respondents from the respondent/writ petitioner.

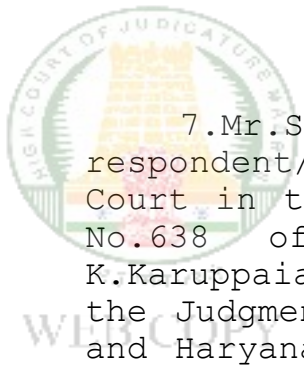
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3.According to the respondent/writ petitioner, a sum of Rs.62,150/- being the excess Dearness Pay paid from July 2006 to June 2007 and Recovery of House Rent allowance for the period from June 2006 to May 2007 was ordered to be recovered in the proceedings, dated 12.07.2011 passed by the second respondent. The respondent/writ petitioner was allowed to retire from service with effect from 31.05.2006 and he could not get any retirement benefits, except the provisional pension because of the pendency of the disciplinary proceedings which ended in favour of the respondent/writ petitioner on 17.12.2008 and 02.07.2010. The recovery proceedings were initiated on 12.07.2011. The order, dated 12.07.2011 was served on the respondent/writ petitioner on 14.07.2011 and thereafter, on 14.07.2011, the respondent/writ petitioner gave a consent letter for deducting the excess amount paid by the appellants/respondents from DCRG and from the arrears of salary as per the Sixth Pay Commission. Subsequently, the respondent/writ petitioner filed the Writ Petition in W.P(MD)No.8895 of 2012, challenging the order, dated 12.07.2011.

4.On a perusal of the affidavit filed in support of the Writ Petition, it could not be seen that the respondent/writ petitioner has not uttered a single word about the letter, dated 15.07.2011 given by him to the second respondent. In spite of giving his consent for deducting the excess amount paid by the appellants/respondents from DCRG and from the arrears of salary as per the Sixth Pay Commission, the respondent/writ petitioner has filed the Writ Petition challenging the order, dated 12.07.2011, suppressing the letter given by him to the second respondent.

5.The learned Single Judge by order, dated 03.04.2014 allowed the Writ Petition by relying upon the Judgment reported in 2013 (6) MLJ 736 (SC) [Union of India and others Vs. Shri Bhanwar Lal Mundan].

6.Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the appellants/respondents submitted that in the Judgment reported in 2016 Writ L.R 1036 [High Court of Punjab and Haryana and others Vs. Jagdev Singh], the Apex Court has held that in the case of an employee giving an undertaking for the recovery of the excess amount paid by the employer, the employee cannot go back on the consent given by him and the excess amount paid by the employer should be refunded as agreed upon by him. The ratio laid down by the Apex Court reported in 2016 Writ L.R 1036 [High Court of Punjab and Haryana and others Vs. Jagdev Singh] squarely applies to the present case.



7.Mr.S.Viswalingam, learned counsel appearing for the respondent/writ petitioner submitted that the Division Bench of this Court in the unreported Judgment, dated 12.03.2018 made in W.A(MD) No.638 of 2012 [The Executive Engineer and another Vs. K.Karuppaiah], had given the relief to the employee distinguishing the Judgment reported in 2016 Writ L.R 1036 [High Court of Punjab and Haryana and others Vs. Jagdev Singh]. In the Judgment made in W.A(MD)No.638 of 2012 [The Executive Engineer and another Vs. K.Karuppaiah], the Division Bench of this Court has held as follows:-

"4.In the instant case, the writ Court noted that without issuing notice to the respondent/writ petitioner, recovery was sought to be effected and it is not sustainable as it amounts to violation of principles of natural justice. In such circumstances, the Court would have remand the matter to the authorities for fresh consideration giving them liberty to issue show cause notice. We are to take a decision as to whether such course has to be adopted in the present appeal. The legal position as pointed out in the aforementioned decision leads to a conclusion that the respondent/writ petitioner is liable to make good the excess payment received by him, in the light of the undertaking. However, in the peculiar facts and circumstances of the case, the petitioner having retired from service, the recovery of the excess amount of around Rs.20,000/- (Rupees Twenty Thousand Only) shall not made."

8.On a reading of the Judgment passed by the Division Bench of this Court in the Writ Appeal, it could be seen that the Division Bench taking into consideration the peculiar facts and circumstances of that case, since the respondent/writ petitioner therein had retired from service, observed that the recovery of the excess amount of around Rs.20,000/- shall not be made.

9.In the case on hand, as already stated, the respondent/writ petitioner had suppressed the letter of undertaking, dated 14.07.2011 while filing the Writ Petition. In spite of the fact that the appellants/respondents had averred in paragraph No.5 of their counter that the respondent/writ petitioner had given an undertaking, the respondent/writ petitioner chose not to disclose the same before the learned Single Judge.

10.In these circumstances, we are of the considered view that the respondent/writ petitioner is not entitled for any relief sought for in the Writ Petition. Applying the principles laid down by the Honourable Supreme Court of India reported in 2016 Writ L.R 1036 [High Court of Punjab and Haryana and others Vs. Jagdev Singh], the order passed in W.P(MD)No.8895 of 2012 is liable to be set aside.



Accordingly, the same is set aside and the Writ Appeal is allowed.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Director of Public Health and
Preventive Medicine,
No.359, Anna Salai,
Chennai - 600 006.
2. The Block Medical Officer,
Government Primary Health Centre,
Veerapandi,
Theni District.

+1CC to Special Government Pleader in SR.No.62831.

PS

DS/SV/MMS/SAR-1 :15.05.2018: 4P/4C

W.A(MD) No.319 of 2015
19.04.2018