



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2018

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

W.A.(MD) No.849 of 2018
and
C.M.P.(MD)No.5136 of 2018

1.The Chief Regional Manager,
The Oriental Insurance Company Ltd.,
Regional Office,
II Floor May Flower Building,
72, Dr.Balasundram Road,
Coimbatore.

2.The Divisional Manager,
The Oriental Insurance Company Ltd.,
Sivasakthi Building,
Tirunelveli.

3.The Senior Branch Manager,
The Oriental Insurance Company Ltd.,
Branch Office,
DDJ, I Floor,
Nagercoil,
Kanyakumari District.

...Appellants/Respondents

Vs.

J.Adline Festus

...Respondent

PRAYER: Writ Appeal is filed under Order XV of the Letters Patent Act against the order passed by this Court made in W.P.(MD).No.10187 of 2010 dated 08.01.2018.

Prayer in WP(MD). 10187/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI to call for the records in connection with the impugned order passed by the 1st respondent in his proceedings in DEPT:I.A.I.D. COMPLIANCE, dated 10.5.2010, quash the same.

For Appellants

: Mr.K.Bhaskaran

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

: Mr.S.Bharathy Kannan

JUDGMENT

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

Challenging the order passed in W.P.(MD)No.10187 of 2010, the respondents in the writ petition have filed the above writ appeal.

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2. The respondent/petitioner filed the writ petition to issue a Writ of Certiorari to call for the records in connection with the impugned order passed by the first respondent in his proceedings, dated 10.05.2010 and quash the same.

3. It is the case of the respondent / writ petitioner that based on the audit objection, the order of recovery has been issued against him, by the proceedings dated 10.05.2010, for the alleged loss during the year 2003-2004, after a lapse of six years.

4. Admittedly, the appellants/respondents have not issued any notice to the respondent/writ petitioner for the recovery of the said amount. It is settled position that a recovery proceedings cannot be initiated without issuing a show cause notice to the employee, that too after a lapse of six years from the date of the alleged loss committed by the employee. That apart, the respondent/writ petitioner was allowed to retire from the service on attaining the age of superannuation on 31.03.2018. Therefore, the recovery cannot be imposed on the retired employee in respect of certain audit objections of the year 2003-2004. The appellants/respondents have not filed their counter affidavit in the writ petition.

5. The learned Single Judge, following the ratio laid down by the Hon'ble Supreme Court of India in the case of State of Punjab v. Rajiq Masih reported in (2015) 4 SCC 334, allowed the writ petition and set aside the impugned proceedings dated 10.05.2010, finding that the recovery in respect of the retired employee is impermissible. That apart, as already stated, the appellants/respondents have not issued any notice to the respondent / writ petitioner before passing the impugned order of recovery.

6. The findings given by the learned Single Judge is perfectly correct. We do not find any ground to interfere with the order passed by the learned Single Judge. The Writ Appeal is liable to be dismissed and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To

+1cc to M/S.K.Bhaskaran, Advocate SR.No. 70033

+1cc to M/S.S.Bharathy Kannan, Advocate SR.No. 70534

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JM/SV/SAR 1/10.07.2018/3P/3C