



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.03.2018
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) No.1312 of 2011

G.Balasubramanian

... Petitioner

-vs-

The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Limited,
Madurai Region,
Kuruvikaran Salai,
Madurai-20.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondent in his proceedings Na.Ka.No.E1/001090/09, dated 10.2.2009 and to quash the same as illegal and consequently to direct the respondent to pay a sum of Rs.39,295/- to the Petitioner with interest at 9% per annum.

For Petitioner : M/s.B.Saravanan

For Respondent : Mr.S.Ramasamy

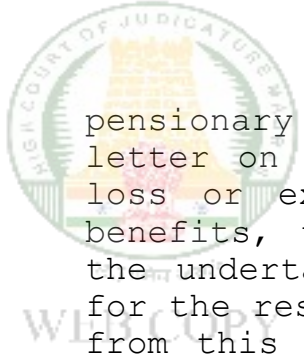
O R D E R

The order of recovery, dated 10.2.2009 is under challenge in this Writ Petition.

2.The Writ Petitioner was working as Assistant in the Tamil Nadu Civil Supplies Corporation and retired from service on 31.1.2007 on attaining the age of superannuation. The grievance of the Writ Petitioner is that an order of recovery was issued in proceeding, dated 10.2.2009 in respect of the excess payment recovered from the terminal benefits of the Writ Petitioner.

3.The learned counsel for the Writ Petitioner states that the terminal benefits were already paid to the Writ Petitioner and excess pay recovered without notice to the Writ Petitioner is in violation of principles of natural justice. The sole ground on which the present Writ Petition is filed is that no show-cause notice or opportunity was issued to the Writ Petitioner and accordingly, the impugned order of recovery is liable to be set aside.

4.The learned counsel for the respondent made a submission that on account of an erroneous calculation, excess payment was disbursed to the Writ Petitioner at the time of settling the terminal and



pensionary benefits. However, the Writ Petitioner had sent a consent letter on 29.1.2007 stating that in the event of ascertaining any loss or excess payment in the matter of settlement of terminal benefits, then the excess amount found can be recovered. Based on the undertaking given by the Writ Petitioner, the learned counsel for the respondent states that the Petitioner cannot seek any relief from this Court, in this Writ Petition. The letter of undertaking given by the Writ Petitioner is enclosed in Page No.1 of the typed-set of papers filed by the respondent. On a perusal of the letter, dated 29.1.2007, it is unambiguous that the Writ Petitioner had agreed for recovery in the event of any excess payment made to him.

5.The grounds raised by the Writ Petitioner that no show-cause notice was issued to him cannot be construed as an empty formality. A show-cause notice and an opportunity is required in the absence of any consent or undertaking. When the Writ Petitioner has given an undertaking in writing, then the question of issuing a show-cause notice does not arise at all. If any error found in the revised order, then it is left open to the Writ Petitioner to submit his objections in this regard. Thus the Writ Petitioner cannot claim that non-issuance of show-cause notice will vitiate the entire order of recovery. In view of the consent letter signed by the Writ Petitioner, this Court is of an opinion that the respondent can recover the excess amount, if it is found.

6.The recovery of excess payment from the employees are squarely covered by the judgement of the Honourable Supreme Court in the case of State of Punjab and others .vs. Rafiq Masih(White Washer) and others reported in (2015) 4 Supreme Court Cases, 334,the Honourable Supreme Court laid down the principles stating that in certain circumstances, recovery cannot be imposed in respect of excess payment made to the employees and those circumstances are narrated in Paragraph 18 of the judgement and the same is extracted hereunder:

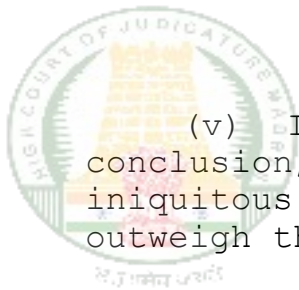
"18.It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize 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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

7. As per paragraph 18, recovery from the employees belonging to Class III and Class IV service (or Group C and Group D Service) are impermissible. Secondly recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery cannot be done. Based on these principles, this Court passed number of orders setting aside the orders of recovery on the ground that no notice or opportunity was given to the Writ Petitioner. However, the Honourable Supreme Court of India in its subsequent judgement in the case of High Court of Punjab and Haryana .vs. Jagdev Singh reported in 2016(0) ALJ-SC-58951 ((2016) 14 SCC 267), the Principles laid down in the case of State of Punjab and others .vs. Rafiq Masih (White Washer) and others reported in (2015) 4 Supreme Court Cases, 334 referred to by the Honourable Supreme Court of India in the case of Jagdev Singh's case and the relevant paragraphs are extracted hereunder:

"10. In State of Punjab and others etc. .vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by employer 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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover." (emphasis supplied)

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the Officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The Officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

8. In para 11 of the judgement, the order of the Honourable Supreme Court of India categorically enumerated that while opting



for the revised scale of pay, if any undertaking is given by the employee, then the same is binding on the employee. The employer is empowered to effect recovery on the basis of the undertaking signed by the employee. Under these circumstances, the question of providing further opportunity to the employee would not arise at all. Issuing show-cause notice can never be adopted as an empty formality, when an employee had consciously signed an undertaking that he will repay the excess payment, if any, found during the audit.

9.This being the legal principles to be followed and in the present Writ Petition, the letter of undertaking given by the Writ Petitioner was produced before this Court, this Court is of an opinion that the judgement rendered by the Honourable Supreme Court of India in the case of High Court of Punjab and Haryana .vs. Jagdev Singh reported in 2016(O) ALJ-SC-58951 ((2016) 14 SCC 267) squarely applicable to the facts and circumstances of the present case. Accordingly, the present Writ Petitioner deserves no merit consideration in the considered opinion of this Court.

10.The terminal and pensionary benefits paid to the public servant are the tax-payers money. Any excess or erroneous payment paid to the public servants from the tax payers money is to be recovered and no employee can take the tax payers money excessively. The state must be cautious while disbursing the payments to the employees and the retirement benefits. Thus this Court has to take into consideration the fact that the excess payment made to the employees are tax payers money. Therefore any excess money, if paid is to be recovered in all means on account of certain errors committed by the establishment of the employer, the public should not be made to suffer. The utilization of public money must be justified in all circumstances and the tax payers money is to be protected by all the public officials concerned and they must be held responsible if the public money is wasted or excessively paid to any person or to any organisation.

11.Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Limited,
Madurai Region, Kuruvikaran Salai, Madurai-20.

+One cc to M/s.B.Saravanan, Advocate, SR.No.53199

+One cc to M/s.P.Seetharaman, Advocate, SR.No.52449

vsn