



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2018

CORAM

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

W.P. (MD) No.3679 of 2011

and

W.M.P. (MD) Nos.2 and 3 of 2011

WEB COPY

V.Ponnuchamy
Assistant (SG),
O/o.The Executive Engineer,
P.W.D.Buildings-Construction and
Maintenance Division,
P.W.D.Campus,
Tirunelveli.

....Petitioner

.vs.

1. The Principal Chief Engineer,
(WRO)-cum-Chief Engineer (GEN),
Public Works Department,
Chepauk, Chennai-5.

2. The Special Chief Engineer,
Public Works Department Buildings,
Construction and Maintenance Circle,
Tirunelveli.

3. The Executive Engineer,
P.W.D.Buildings Construction
and Maintenance Division,
P.W.D.Campus, Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in his proceedings Lr.No.S3(3)/52442/2010, dated 28.01.2011, and the consequential order passed by the second respondent in his proceedings in Pa.2/1032/2011, dated 22.3.2011 and the consequential revision of pay and recovery order passed by the third respondent in his proceedings in Ee.1/1337/2011-2, dated 24.3.2011 and to quash the same as illegal.

For Petitioner : Mr.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.M.Muthu
1 to 3 Addl. Government Pleader



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."

5.Clause(1) of the paragraph 18 states that recovery from the Grade-II and III employees are impermissible in view of the settled principles in the decision cited supra. The order impugned in this Writ Petition passed by the first respondent in Lr.No.S3 (3)/52442/2010, dated 28.01.2011 is quashed in respect of recovery and the respondents are at liberty to correct the scale of pay and fix the scale of pay as applicable to the Petitioner as per the Government Orders in force. While effecting such revision of pay, the respondents are bound to issue notice to the Petitioner and after getting his explanations/objections, consider the same and pass appropriate orders in respect of revision of pay.

6. Accordingly, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Principal Chief Engineer,
(WDO) or Principal Chief Engineer (GEN),
Public Works Department,
Chepauk, Chennai-5.



2. The Special Chief Engineer,
Public Works Department Buildings,
Construction and Maintenance Circle,
Tirunelveli.

3. The Executive Engineer,
P.W.D. Buildings Construction
and Maintenance Division,
P.W.D. Campus, Tirunelveli.

+1cc to M/s. Ajmal Associates, Sr.No.43799
+1cc to Spl. Government Pleader Sr.No.43979

VSN

VB/JC/SAR2/15.02.2018/4P/6C

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and
W.M.P. (MD) Nos.2 and
3 of 2011
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