



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.9474 of 2011
and
M.P.(MD) No.1 of 2011

P.Panchatcharam

... Petitioner

Vs.

1.The Managing Director,
TWAD Board,
Chepauk,
Chennai - 5.

2.The Superintending Engineer,
TWAD Board,
Trichy-Pudukkottai Circle,
Trichy - 1.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the order issued by the 2nd Respondent in his proceedings Lr.No.2912/F.Term.Contr./A2/2011 dated 01-08-2011 and quash the same.

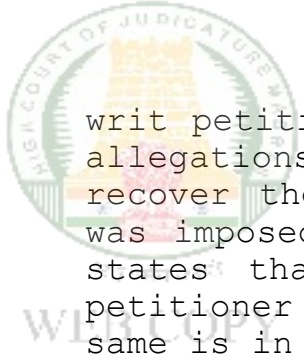
For Petitioner : Mr.N.Sankar Ganesh

For Respondents : Mr.Porkodi kannan

O R D E R

The order of recovery issued by the second respondent in proceedings dated 01.08.2011 is under challenge in this writ petition.

2.The learned counsel for the writ petitioner states that the writ petitioner worked as a Superintending Engineer and retired from service on attaining the age of superannuation on 30.06.1999. The impugned order of recovery was issued after the retirement of the



writ petitioner on 01.08.2011. The recovery was issued based on the allegations that certain materials were not returned and in order to recover the exact amount for non returned materials, the recovery was imposed. However, the learned counsel for the writ petitioner states that no notice or opportunities was given to the writ petitioner before issuing the impugned order of recovery and the same is in violation of the principles of natural justice.

3.The learned counsel appearing on behalf of the respondents is unable to dispute the fact that the no notice was issued. However, it is contented that the writ petitioner was aware of the proceeding, which was pending even before his retirement. Thus, no such contention is raised on behalf of the respondents.

4.This Court is of an opinion that the writ petitioner had already retired from service in the year 2009 itself. Thus, the recovery imposed after a lapse of 2 years from the date of retirement cannot be sustained, in view of the legal principles settled by the Hon'ble Supreme Court of India in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 Supreme Court Cases 334 settled by the principles in paragraph 18, which is extracted here under:

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, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to the 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 be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

5.As per para 18 of the judgment cited supra, recovery cannot be imposed, more so, without notice to the retired employees. This being the factum, this Court is of an opinion that the order of recovery is liable to be set aside. Accordingly, the impugned order passed by the second respondent in his proceedings



Lr.No.2912/F.Term.Contr./A2/2011 dated 01-08-2011, is quashed and the writ petitioner stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

- 1.The Managing Director,
TWAD Board,
Chepauk,
Chennai - 5.
- 2.The Superintending Engineer,
TWAD Board,
Trichy-Pudukkottai Circle,
Trichy - 1.

+1cc to M/S.N.Sankar Ganesh, Advocate SR.No. 55611

W.P.(MD)No.9474 of 2011

mm

JM/JC/SAR 3/19.04.2018/3P/4C