

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2019

C O R A M

The Honourable Mr.JUSTICE M.S.RAMESH

W.P.No.18887 of 2004
& WPMP No.22638 2004
& WVMP.No.3 of 2015

S.Veeranan

.. Petitioner

Vs.

- 1.The State of Tamilnadu,
rep. by the Secretary to Government,
Social Welfare Department,
Fort st. George,
Chenani-600 009.
- 2.The Special Commissioner & Director
of Most Backward Classes & Denotified
Communities Welfare,
Chepuak,
Chennai-600 005.
- 3.The Special Deputy Collector,
Kallar Reclamation,
Madurai-20
- 4.The Headmaster,
Government Kallar Reclamation,
Higher Secondary School,
Papapatti,
Madurai District

.. Respondents

Petition filed under Article 226 of Constitution of India for the issuance of a Writ of certiorari to call for the records on the file of the Headmaster, Government Kallar Higher Secondary School, Pappapatti, the fourth respondent herein in its Proceedings No.Na.Ka.H18/01/04/04 dated 02.06.2004 and quash the same as illegal, arbitrary unreasonable being violative of the rules and regulations of the respondents and principles of natural justice.

For Petitioner : Mr.A.R.Suresh

For Respondents : Mr.S.Suresh Kumar, GA.

O R D E R

The order impugned in the present writ petition is for recovery of the excess salary paid to the petitioner herein during his service.

2. It is seen that the petitioner had retired from service on 30.06.1997 and he had received Gratuity as well as the Pension. The order dated 02.06.2004, which is impugned in the present writ petition is a demand of recovery of excess payments, which is passed after his retirement.

3. The Hon'ble Supreme Court of India laid down the legal principles in the matter of recovery in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and Others reported in (2015) 4 Supreme Court Cases 334, wherein, their Lordships Jagdish Singh Khehar and Arun Mishra J.J, in paragraph No.18 of the judgment, laid down the principles in respect of recovery, which 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, summarise 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 be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

4. As per the judgment cited supra, recovery of excess payments from the retired employees is impermissible. Thus, by following the precedent laid down by the Hon'ble Supreme Court of India, the impugned order dated 02.06.2004 is unsustainable and the same is liable to be quashed.

5. Accordingly, the impugned order dated 02.06.2004 passed in Na.Ka.No.H18/01/2004/2004 is hereby quashed and the writ petition stands allowed. However no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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 - 4.The Headmaster,
Government Kallar Reclamation,
Higher Secondary School,
Papapatti, Madurai District
- +1 cc to The Government Pleader, Sr.No.16625

W.P.No.18887 of 2004

PA(CO)
CSL/29.03.2019