

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.19507 of 2004
& WPMP.No.23470 of 2004

M.Ganesan

... Petitioner

Vs.

1.The State of Tamilnadu,
rep. by the Secretary to Government,
Department of Adi Dravidar and
Tribal Welfare Department,
Fort St. George,
Chennai-600 009.

2.The Director,
Adi Dravidar and
Tribal Welfare Department,
Chepauk,
Chennai-5

3.The District Adi Dravidar
Tribal Welfare Officer,
Thanjavur District,
Thanjavur

4.The Accounts Officer,
O/o. The Principal Accountant,
General (A& E),
Tamilnadu, Chennai-18.

... Respondents

Petition filed under Article 226 of Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for all the relevant records relating to the impugned proceedings in No.Pen.9/III/G 72-1353/2003-04/Rev dated 12.03. passed by the fourth respondent herein and consequential proceedings in No.Pension 9/III/G 91-2038/Retd/2003-04/20 K dated 23.03.2004 passed by the fourth respondent herein and quash the same as arbitraty, unreasonable, improper, illegal being violative of the rules and regulations of the respondents and principles of natural justice and thereby direct the respondents to admit the pension proposal of the petitioner on

sanctioning his pensionary benefits which are legally entitled to him.

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 31.05.2003 and he had received Gratuity as well as the Pension. The order dated 12.03.2003 and the consequential proceedings dated 23.03.2004 passed by the third and the fourth respondents respectively, which are impugned in the present writ petition is a demand 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 12.03.2003 and the consequential proceedings dated 23.03.2004 passed by the third and the fourth respondents respectively is unsustainable and the same is liable to be quashed.

5. Accordingly, the impugned order vide in No.Pen.9/III/G 72-1353/2003-04/Rev dated 12.03.2003 and the consequential proceedings vide in No.Pension 9/III/G 91-2038/Retd/2003-04/20 K dated 23.03.2004 passed by the third and the fourth respondents respectively is hereby quashed and the writ petition stands allowed. However, no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dn

To

- 1.The Secretary to Government,State of Tamilnadu,
Department of Adi Dravidar and
Tribal Welfare Department,
Fort St. George, Chennai-600 009.
- 2.The Director,
Adi Dravidar and
Tribal Welfare Department,
Chepauk, Chennai-5
- 3.The District Adi Dravidar
Tribal Welfare Officer,
Thanjavur District,
Thanjavur

4.The Accounts Officer,
O/o. The Principal Accountant,
General (A& E),
Tamilnadu, Chennai -18.

+1 cc The Government Pleader, Sr.No.16623

W.P.No.19507 of 2004

PA(CO)
CSL/29.03.2019