IN THE HIGH COURT OF JUDICATURE OF MADRAS
DATED: 11.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.34831 of 2005
and
WP.MP.No.37714 of 2005

M.Gunasekaran ...Petitioner

Vs

1.The Commissioner,
Adi Dravidar Welfare,
Chennai-5.

2.The District Adi Dravidar
Welfare officer,
Salem.

3.The Special Tahsildar,
Adi Dravidar Welfare,
Attur, Salem District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or directions in the nature of writ, calling for the records relating to the order in Na.Ka.No.18968/97 (D4) dated 25.05.1998 passed by the 2^{nd} respondent and quash the same, and direct the respondents to settle the Gratuity amount payable to the petitioner.

For Petitioner : Mr. S.Kamadevan

For Respondents: Mrs.K.Bhuvaneswari, AGP

O R D E R

The Hon'ble Apex Court in its decision reported in 2015 (4) SCC 334 in the case of State of Punjab and others vs Rafiq Masih (White Washter) and others, had held that recovery from the employees who are due to retire in one year from the order, is impermissible in law.

2.In the instant case, the petitioner was due to retire on 31.08.20040 and the impugned order came to be passed on 30.08.2004, permitting the respondents to recover the amount on his executing a bond of undertaking, for the expenses made by the petitioner when he served as a Warden in the Government Adi Dravidar and Tribal Hostel. In view of the decision of the Hon'ble Apex Court, such a recovery order passed one day prior to his retirement, may not be permissible.

3.It is further seen that originally the 2nd respondent herein had passed an order dated 25.05.1998, which is impugned in the present petition stating that the petitioner had incurred expenditure over and above the sanctioned amount and in view of the audit objections, he had passed an order directing that a sum of Rs.50,941/- be recovered from the petitioner herein. Subsequent to this proceedings dated 25.05.1998, the 2nd respondent had not initiated any steps for recovery and at the verge of petitioner's retirement, the order dated 30.08.2004 came to be passed, whereby the objected expenditure was sought to be recovered from the petitioner's terminal benefits. By applying the aforesaid ratio held by the Hon'ble Apex court reported in 2015 (4) SCC 334, it is hereby held that recovery from the retired employee or the employees who are due to retire within one year of the impunged order of recovery, cannot be made under law.

4.In the said decision, it was also held that in any other case, where the Court arrives at the conclusion, that if a recovery is made from the employee, which 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, the same is also impermissible in law. Since the respondents herein had kept quiet from the year 1998 onwards till the petitioner was due to retire, the subsequent recovery itself could be termed as harsh and arbitrary. On this ground also, the petitioner is entitled to succeed.

5.In the light of the above observations, the impugned order in Na.Ka.No.18968/97 (D4) dated 25.05.1998 passed by the 2nd respondent is quashed. Consequently, the 2nd respondent shall release any of the outstanding amount in his terminal benefits to the petitioner along with interest at the rate of 6% from the date of petitioner's superannuation, within a period of 12 weeks from the date of receipt of copy of this order.

6.Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jrs/hvk

To

1.The Commissioner,
  Adi Dravidar Welfare,
  Chennai-5.

2.The District Adi Dravidar Welfare officer,
  Salem.

3.The Special Tahsildar,
  Adi Dravidar Welfare
  Attur, Salem District.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.227
+1cc to the Government Pleader, S.R.No.23138

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EV(CO)

RRS(24/04/2019)