

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.22324 of 2015,
M.P.No.1 of 2015 & W.M.P.No.11709 of 2016

1 K.Kamalanabhan
Assistant (Selection Grade) (Retd)
S/o.Late A.Kannaiah Naidu,
No.56 Jzayashree Nagar,
Pattunool Chatram, Sriperumbudur-602 105
Kancheepuram District ... PETITIONER

Vs.

1 The Commissioner of Agriculture
Agriculture Department Chepauk Chennai-5.
2 The Joint Director of
Agriculture Kancheepuram
3 The Governemnt of Tamilnadu
Rep. by Secretary Agriculture Department
Fort St. George Chennai-9. ... RESPONDENTS

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records in No.A2/ 17191/2004-1 dated 8.6.2015 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.L.Surya Gandhi
for Mr.S.Sadasharam
For Respondents : Mr.K.Karthikeyan,
Govt. Advocate

O R D E R

The brief facts of the case are as follows:

The writ petitioner was working as Assistant, Selection Grade in the respondent department. During the year 1991, he was placed under suspension from 9.7.1991 to 31.5.1997. Challenging the proceedings of the second respondent, dated 27.6.2005, the petitioner has filed writ petition in W.P.No.8756 of 2006 before this Court. This Court by order, dated 16.2.2008, while confirmed the order of the second respondent, held that when the suspension period was counted for service, the terminal benefits of the petitioner would be calculated by taking that period into account. The said period was not taken into account for pensionary benefits. Hence, the petitioner has made a request to treat the period viz., 9.7.1991 to 31.5.1997 as qualified service period. But the representation of the petitioner was negated by the respondent. Aggrieved by the same, the petitioner has filed W.P.No.3003 of 2013 before this Court. This Court by order, dated 18.9.2013 in para 7 held as follows:

''7. In view of the above, it is clear that the respondents have to treat the period under which the petitioner was under suspension, as qualifying service for the purpose of pensionary benefits. When things stand so contrary to the earlier order passed by the second respondent and the order passed by this Court in the above writ petition, the impugned order has been passed. Therefore, the impugned order suffers and the same is set aside and the suspended period of the petitioner for the purpose of pensionary benefits and pass appropriate orders within a period of eight (8) weeks from the date of receipt of a copy of this order. Considering the facts and circumstances of the case, the petitioner is not entitled to any interest on the on the said amount.''

2. Pursuant to the said order, the respondent has complied with the said order and paid pensionary benefits to the writ petitioner by taking into account the abovesaid period as qualifying service for the purpose of pensionary benefits. Thereafter, the petitioner has filed W.P.No.19873 of 2013 for payment of compound interest at the rate of 12% for the period from 31.5.1997 to 28.2.2012 and the same was allowed on 6.2.2015. Thereafter, the respondent passed the impugned order, dated 8.6.2015 and the same has been communicated to the petitioner, stating that a sum of Rs.1,40,414/- calculated as net salary for the period 9.7.1991 to 31.5.1997 and the same has to be recovered from the

petitioner. That apart, a sum of Rs.22,822/- is to be recovered from the petitioner. Challenging the said order, the petitioner has filed the present writ petition before this Court.

3. Learned counsel appearing for the petitioner would submit that the petitioner was permitted to retire from service on 18.7.2007 on attaining superannuation. The impugned order passed by the respondent is to recover the payment made to the petitioner for the period 9.7.1991 to 31.5.1997. According to the petitioner, he was not served any recovery order while he was in service. When the petitioner was permitted to retire from service on 18.7.2007, the impugned order has been passed for recovery of Rs.22,822/- i.e. after the lapse of nearly about 8 years. Therefore, the impugned order passed by the respondent is illegal and the same is liable to be quashed.

4. The learned Government Advocate appearing for the respondent would submit that the impugned order passed by the respondent for recovery of the remaining recovery amount payable by the petitioner. The writ petitioner was suspended from service from 9.7.1991 to 31.5.1997. Prior to suspension, the respondent recovered the amount from the petitioner, but a sum of Rs.84,020/- was not recovered from the petitioner. On verification of records, the impugned order has been passed.

5. It is seen from the records, the writ petitioner was suspended from service from 9.7.1991 to 31.5.1997. The petitioner was permitted to retire from service on attaining the age of superannuation on 31.5.1997 by the proceedings of the second respondent in Proc.No.AA1/23225/91, dated 18.4.2005. The writ petitioner has filed W.P.No.8756 of 2008 before this Court. By order, dated, 16.2.2008 this Court directed the respondents to settle the terminal benefits to the petitioner, calculating the aforesaid leave period into account. Thereafter, the petitioner made representation to the respondent to treat the suspension period as qualified service to determine the pensionary benefits to the writ petitioner. However, such request was rejected. Challenging the said order, the petitioner has filed W.P.No.3003 of 2013 and this Court by order, dated 18.9.2013 while holding that the suspension period have to be treated as qualifying service for the purpose of pensionary benefits, directed the second respondent to count the suspended period of the petitioner for the purpose of pensionary benefits and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of the said order.

6. After several writ petitions have been filed by the petitioner seeking the aforesaid relief, the respondents

have not complied with the order passed by this Court. Though the writ petitioner was permitted retire from service on 18.7.2007, after a lapse of nearly 8 years, the present impugned order has been passed to recover the amount from the petitioner. There is no materials placed before this Court to show that the order has been passed prior to the suspended period. Therefore, this Court presume that there is no recovery order has been passed or any communication sent to the petitioner till the impugned order is passed. Therefore, the respondent passed the impugned recovery order only after the writ petitioner was permitted to retire from service, that too after a lapse of about 8 long years.

7. In the case of State of Punjab & Others Vs. Rafiq Masih (White Washer) etc., reported in (2015) 4 SCC 334, the Honourable Supreme Court held as follows:

"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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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."

The aforesaid decision is squarely apply to the facts of the case insofar as recovery is concerned.

8. Considering the facts and circumstances of the case and in the light of the decisions cited supra, this Court has no hesitation to quash the order impugned in the present

writ petition.

9. Accordingly, the writ petition is allowed. The impugned order passed by the second respondent, dated 8.6.2015 is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Agriculture
Agriculture Department Chepauk Chennai-5.

2.The Joint Director of
Agriculture Kancheepuram

3.The Secretary Agriculture Department,
Government of Tamil Nadu,
Fort St. George Chennai-9.

+1cc to Mr.S.Sadasharam, Advocate SR.103757

+1cc to the Government Pleader SR.104534

W.P.No.22324 of 2015,
M.P.No.1 of 2015 & W.M.P.No.11709 of 2016

PVS (CO)
CB(30/01/2020)

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