IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.23751, 25549, 42455 of 2016, 7991 to 7995, 16252 of 2017, 3276 of 2018
WMP.Nos.20345,21893,36344, 36345 of 2016, 8732 to 8738, 17590 & 17591 of 2017

Chennai Port and Dock Labour Board,
Employees Progressive Union, No.1,
E Block, Fourth Line Beach, Clive Battery,
Chennai - 600 001.
Rep. by its President, N.Mahadevan ... Petitioner
(in WP.No.23751 of 2016)

N.Mohanavelu .. Petitioner in WP.No.25549 of 2016
G.Annamalai .. Petitioner in WP.No.42455 of 2016
R.Vedagiri .. Petitioner in WP.No.7991 of 2017
P.Rangan .. Petitioner in WP.No.7992 of 2017
R.Murthy .. Petitioner in WP.No.7993 of 2017
D.Sathya kumar .. Petitioner in WP.No.7994 of 2017
T.Manickam .. Petitioner in WP.No.7995 of 2017
C.M.Velayudham .. Petitioner in WP.No.16252 of 2017
S.Kalvinathan .. Petitioner in WP.No.3276 of 2018

Vs.

1. The Chairman,
Chennai Port Trust,
Rajaji Salai, Chennai - 600 001.

2. The Financial Advisor & Chief Accounts Officer,
Chennai Port Trust,
Rajaji Salai, Chennai - 600 001. ... Respondents
(in all WPs)

Prayer: Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling in the records relating to the pension recovery letters to the Petitioner in AO (Pension) /ALC /2015/F dated 09.05.2016, 10.05.2016, 09.05.2016,09.05.2016,09.05.2016, 10.05.2016, 10.05.2016,09.05.2016,06.01.2018, Respectively on the file of the 2nd respondent quash the same (in WPs 25549, 42455 of 2016, 7991 to 7995, 16252 of 2017, 3276 of 2018). for a Writ of Prohibition the respondents from recovering the gratuity amount already paid to the members of the petitioner (retired employees) from the payment of monthly pension in pursuant to the pension recovery letters to the retired employees by FA & CAO dated 04.02.2016, 09.05.2016 etc., on the file of the 2nd respondent.(in WP.No.23751 of 2016)

For Petitioners : Mr.S.Doraisamy (for al WPs)

For Respondents : Mr.Richardson Wilson for M/s. P.Wilson Associates (for all WPs)

COMMON ORDER

The common question that arises in all these writ petitions is whether the order passed by the respondents recovering the excess amount of gratuity from the pension is correct or not.

2. The learned counsel for the petitioner and respondents agree that the said issues has been covered by the judgment dated 12.04.2019 in WP.No.18759 of 2018 and etc., batch cases, reads as under:-

> "7.This Court is of the considered opinion that the payment admittedly had already been paid to these writ petitioners. They had received the payment sometime back and the recovery order impugned is passed, based on the Audit objections raised by the Respondent Establishment. Under these circumstances, this Court has to consider, whether such recovery is permissible or not.
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> 8.The legal principles to be considered is that the writ petitioners are working as Dock Labour Board Workers in Class IV services. The payment was made by the Establishment as per the calculations made by the respondent officials. Absolutely, there was no misrepresentation or otherwise on the part of the writ petitioners. Even, in case of any such excess payment made by the Establishment, the same cannot be recovered after a lapse of few Months or years from these Class IV employees as the recoveries will affect the livelihood of the Class IV employees. It may not be possible to recover the amount from the Class IV employees in lump sum or even in installments or in the event of any such recovery, it will affect the normal family life of these Class IV employees drastically.
>
> 9.The Hon'ble Supreme Court of India in the case of State Of Punjab & Ors vs Rafiq Masih

[2015 (4) SCC 334]. The Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgment, 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 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 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.

10.The Principles settled in the judgment cited supra is that recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service) are impermissible. Under these circumstances, irrespective of the merits raised by the learned counsel for the respondents, the recovery of the salary already paid to these writ petitioners cannot be permitted.

11.However, the respondents are bound to correct the errors, if any occurred and pay the correct salary to these writ petitioners in accordance with the Government of India Rules and as per the Pay Rules in force. In this regard, the respondents are permitted to rectify the errors, if any, in respect of the fixation of pay to these writ petitioners prospectively. However, the recovery already imposed pursuant to the impugned orders cannot be effected.

12.This being the factum, the impugned order passed by the respondents in proceedings in Sr.AO (Pension)/ALC/2017/F dated 06.01.2018 is quashed. The amount already recovered, if any, is directed to be reimbursed to the writ petitioners within a period of 12 weeks from the date of receipt of a copy of this order."

3. The impugned order is clearly violative of the law laid down by the Hon'ble Supreme Court.

4. These writ petitions are allowed in terms of the above said order. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pkn.
To

1. The Chairman,
Chennai Port Trust,
Rajaji Salai, Chennai - 600 001.

2. The Financial Advisor & Chief Accounts Officer,
Chennai Port Trust,
Rajaji Salai, Chennai - 600 001.

+1cc to Mr.S.Doraisamy , Advocate SR.No. 93454

W.P.Nos.23751 of 2016 & batch

A.SK(25/11/2019)