



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.12.2019

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.41240 to 41244 of 2016

and

W.M.P.Nos.35214 to 35218 of 2016

M.Mohan	..Petitioner in W.P.No.41240/2016
G.Kanagarani	..Petitioner in W.P.No.41241/2016
M.G.Gopalakrishnan Nair	..Petitioner in W.P.No.41242/2016
R.Jayachandran	..Petitioner in W.P.No.41243/2016
P.Seniappan	..Petitioner in W.P.No.41244/2016

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 W.Ps

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records relating to the pension recovery letters to the petitioner in AO (Pension)/ALC/2015/F dated 09.05.2016 on the file of the second respondent and quash the same.

For Petitioners : Mr.S.Doraisamy

For Respondents : Mr.Richard Wilson



COMMON ORDER

This writ petition has been filed seeking issuance of certiorari to call for the records relating to the pension recovery letters to the petitioner in AO (Pension)/ALC/2015/F dated 09.05.2016 on the file of the second respondent and quash the same.

2. The learned counsel for the petitioners would submit that in respect of the very same issue, this Court passed an order which reads as follows:-

"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."

3. In view of the above order rendered by this Court, this Court also takes a similar view in this writ petition also. Accordingly, the writ petition is allowed under the same terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

AT

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.104138

+1cc to Mr.P.Wilson Associates, Advocate SR.No.103920

W.P.No.41240 to 41244 of 2016
and
W.M.P.Nos.35214 to 35218 of 2016

PP (CO)
GMY (26/12/2019)