

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.18664 of 2018
and
WMP.No.21998 of 2018

M.Vadivelu

... Petitioner

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

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ 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 2nd respondent, quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.Richardson Wilson,
for M/s.P.Wilson Associates

O R D E R

The relief sought for in the present writ petition is to quash the order of recovery issued by the respondents in respect of the payment already made to the writ petitioner.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is working as Mazdoor in the Madras Dock Labour Board and he is a monthly paid employee.

3.The grievances of the writ petitioner is that the respondents issued the impugned order of recovery, stating that the piece rate charges to be paid to the writ petitioner was erroneously settled and excess amount has been paid to the present petitioner over and above the rates prescribed by the Government of India.

4.The learned counsel for the respondents states that over payment was made to this writ petitioner in violation of the Government of India orders and there was an objection from the Establishment that the payment made is irregular and contrary to the guidelines issued by the Government of India.

5.The learned counsel for the writ petitioner further states that the payment was made pursuant to the orders passed by the Hon'ble Division Bench of this Court in W.A.No.6635 of 2005 & etc., batch dated 09.07.2010. Thus, there is no irregularity in respect of the payment already made to the writ petitioner.

6.However, the learned counsel for the respondents disputes the contentions of the writ petitioner by stating that the judgment of the Hon'ble Division Bench is of no avail to this writ petitioner.

7.This Court is of the considered opinion that the payment admittedly had already been paid to the writ petitioner. He 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.

8.The legal principles to be considered is that the writ petitioner is working as Mazdoor in the Madras Dock Labour Board 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 petitioner. 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 the 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 the 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- Class III and Class IV service (or Group C and Group D service).
- (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 this writ petitioner cannot be permitted.

11.However, the respondents are bound to correct the errors, if any occurred and pay the correct salary to the writ petitioner 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 the writ petitioner prospectively. However, the recovery already imposed pursuant to the impugned order cannot be effected.

12.This being the factum, the impugned order passed by the respondents in proceedings in AO (Pension)/ALC/2015/F dated 09.05.2016 is quashed. The amount already recovered, if any, is directed to be reimbursed to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

13.With this direction, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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.39650

W.P.No.18664 of 2018
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srg 12/06/2019