

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.04.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.18759, 15992, 17188 to 17190, 1831 to 1836,
1864 to 1870, 3110 to 3115, 3582, 5306, 5927, 6855 of 2018
and
W.M.P.Nos.22108, 19021, 20458 to 20460, 2278 to 2283, 2313 to
2319,
3823 to 3828, 4374, 6533, 7303, 8496 & 8497 of 2018

S.DORAI ... PETITIONER in WPNO.18759 OF 2018
P.SEKAR ... PETITIONER in WPNo.15992 of 2018
S.KUPPAN ... PETITIONER in WPNo.17188 of 2018
V.DESAPPAN ... PETITIONER in WPNo.17189 of 2018
A.KULANDAIRAJ ... PETITIONER in WPNo.17190 of 2018
BHAKIALAKSHMI ... PETITIONER in WP No.1831 of 2018
R.GOPAL ... PETITIONER in WP No.1832 of 2018
E.RUKMANI ... PETITIONER in WP No.1833 of 2018
G.PANDIAN ... PETITIONER in WP No.1834 of 2018
R.CHELLADURAI ... PETITIONER in WP No.1835 of 2018
N.PALANI ... PETITIONER in WP No.1836 of 2018
K.RAJASEKARAN ... PETITIONER in WP No.1864 of 2018
IRUDAYARAJ ... PETITIONER in WP No.1865 of 2018
R.VIVEKANANDAN ... PETITIONER in WP No.1866 of 2018
G.V.SESHAIAH ... PETITIONER in WP No.1867 of 2018
K.VIJAYAKUMAR ... PETITIONER in WP No.1868 of 2018
K.GOVINDAN ... PETITIONER in WP No.1869 of 2018

N.KARTHIKEYAN ... PETITIONER in WP No.1870 of 2018
A.KUPPUSAMY ... PETITIONER in WP No.3110 of 2018
R.DURAIKANNU ... PETITIONER in WP No.3111 of 2018
M.VINAYAGAM ... PETITIONER in WP No.3112 of 2018
D.MARIMUTHU ... PETITIONER in WP No.3113 of 2018
R.MANICKAM ... PETITIONER in WP No.3114 of 2018
N.KASIAMMA ... PETITIONER in WP No.3115 of 2018
P.SEKAR ... PETITIONER in WP No.3582 of 2018
I.X.EGBERT MORAIS ... PETITIONER in WP No.5306 of 2018
E.JOSEPH ... PETITIONER in WP No.5927 of 2018
C.SWAMIPILLAI ... PETITIONER in WP No.6855 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 the WPs.

Common Prayer in all:-

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 Sr.AO(Pension)/ALC/2017/F dated 06.01.2018 on the file of the 2nd respondent, quash the same.

For Petitioners : Mr.S.Doraisamy(in all W.Ps)

For Respondents : Mr.Richardson Wilson
for M/s.P.Wilson Associates for R1 & R2
(in all W.Ps)

C O M M O N O R D E R

The relief sought for in all these writ petitions are to quash the order of recovery issued by the respondent in respect of the payment already made to the writ petitioners.

2.The learned counsel appearing on behalf of the writ petitioners state that the writ petitioners are working as Dock Labour Board Workers and they are monthly paid employees.

3.The grievances of the writ petitioners are that the respondent issued the impugned order of recovery, stating that the piece rate charges to be paid to the writ petitioners were erroneously settled and excess amount has been paid to these petitioners over and above the prescribed rates prescribed by the Government of India.

4.The learned counsel for the respondents state that over payment was made to these writ petitioners 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 petitioners further state that the payment was made pursuant to the orders passed by this 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 these writ petitioners.

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

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.

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 hereinabove, 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.

13.With this direction, all the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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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, S.R.No.36521

+1cc to M/s.P.Wilson Associates, Advocate, S.R.No.36247

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AP (CO)
CS/04/07/2019
CS/29/07/2019