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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No. 8200 of 2011

and M.P.(MD) No.1 of 2011

R.Ravikumar

... Petitioner

Vs.

1. The Superintending Engineer

Public Works Department

Buildings and Maintenance

Tanjore

2. The Chief Engineer

Public Works Department (Buildings)

Trichy Region

Trichy-1

3. The Executive Engineer

Public Works Department

Buildings and Maintenance Division

Tanjore

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorified Mandamus, calling for the records pertaining to the impugned order in Se.Mu.No.Na.Ka.1713/2011/Ne.A2 dated 23.06.2011 passed by the third respondent and quash the same.

For Petitioner : Mr.R.Vijayakumar

For Respondents : Mr.D. Muruganantham
Additional Government Pleader

O R D E R

The order of recovery, dated 23.06.2011 in respect of increment already paid to the writ petitioner is under challenge in the present writ petition.

2.The writ petitioner was initially appointed on daily wage basis and subsequently, regularised in the sanctioned post of Work Inspector Grade-III in the regular time scale of pay. Now the writ petitioner attained the age of superannuation and the grievance of the writ petitioner is that the period in which the petitioner served as temporary employee shall also be reckoned for calculating the service benefits and increment paid during the relevant point of time is sought to be recovered based on the audit objections.



3. No notice or opportunity was given to the writ petitioner before issuing the impugned order and the impugned order issued is in violation of principles of natural justice.

4. This Court is of the considered opinion that any order affecting the rights of a government employee must be issued only after providing opportunity to the employee concerned.

5. The learned Additional Government Pleader appearing on behalf of the respondents is unable to establish that show cause notice was issued before issuing the impugned order, dated 23.06.2011. That apart, the writ petitioner was serving in Group-C service and therefore, the increment or salary even if paid erroneously cannot be recovered after lapse of so many years. In the present case on hand, the increment paid is sought to be recovered and even in respect of fixation of pay, the amount already paid cannot be recovered from the salary.

6. In view of the Hon'ble Supreme Court of India in the case of State of Punjab Vs. Rafiq Masih, reported in 2015(4) SCC, 334 and the relevant paragraph-18 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:

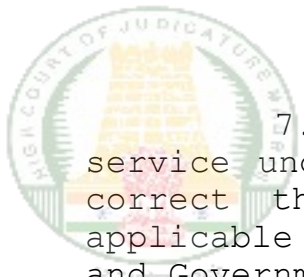
(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(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".



7. That apart, the writ petitioner has already retired from service under these circumstances, the respondents are directed to correct the scale of pay and revise the pay for pension as applicable to the writ petitioner in accordance with the Pay Rules and Government Orders in force.

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8. Even if any such mistakes were made already and the payment already made to the writ petitioner cannot be recovered in view of the legal principles settled by the Apex Court.

9. Accordingly, the impugned order passed by the 3rd respondent in proceedings No.Se.Mu.No.Na.Ka.1713/2011/Ne.A2, dated 23.06.2011 is quashed and the respondents are directed to correct the mistakes, if any, in the fixation of pay as well as the revision of pension after providing opportunity to the petitioner, however the excess payment already made cannot be recovered from the Government servant.

10. In the result, the Writ Petition stands allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Superintending Engineer,
Public Works Department,
Buildings and Maintenance,
Tanjore.
2. The Chief Engineer,
Public Works Department (Buildings),
Trichy Region,
Trichy-1.
3. The Executive Engineer,
Public Works Department,
Buildings and Maintenance Division,
Tanjore.

+1 CC to Mr.R.VIJAYAKUMAR, Advocate SR-66837.
+1 CC to SPL GP SR-67061.

W.P[MD)]No. 8200 of 2011
04.06.2019