

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 16.12.2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.23764 of 2019 and
W.M.P.No.23647 of 20019
W.P.No.10450 of 2020 and
W.M.P.No.12704 of 2020

WP.No.23764/2019:

The Management,
Tamil Nadu Civil Supplies Corporation Ltd.,
Represented by its Chairman cum Managing Director,
Thambusamy Road, Kilpauk,
Chennai - 600 010.Petitioner

Vs.

Palaniappan.KRespondent

WP.No.10450 of 2020:

The Management,
Tamil Nadu Civil Supplies Corporation Ltd.,
Represented by its Managing Director,
No.12, Thambusamy Road, Kilpauk,
Chennai - 600 010.Petitioner

Vs.

K.KannimuthanRespondent

Prayer : Petitions filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the order passed by the Presiding Officer, Additional Labour Court, Coimbatore in C.P.Nos.66 and 65 of 2009 dated 10.09.2018 and to quash the same.

For Petitioner : Mr.P.Paramasiva Doss (in both WPs)

For Respondent : Mr.Ajoy Khose (in both WPs)

COMMON ORDER

The prayer sought for in W.P.No.23764 of 2019 is to issue a writ of certiorari to call for the records of the order passed by the Presiding Officer, Additional Labour Court, Coimbatore in C.P.No.66 of 2009 dated 10.09.2018 and to quash the same.

The prayer sought for in W.P.No.10450 of 2020 is to issue a writ of certiorari to call for the records of the order passed by the Presiding Officer, Additional Labour Court, Coimbatore in C.P.No.65 of 2009 dated 10.09.2018 and to quash the same.

2.Since the issue raised in both the writ petitions are common and therefore, with the consent of the learned counsel appearing for both sides, both the writ petitions were heard together and have been disposed of by this common order.

3.The short facts which are required to be noticed for the disposal of these two writ petitions are as follows:

(i) That the respective respondents in these two writ petitions are the erstwhile employees of the petitioner viz., Tamil Nadu Civil Supplies Corporation Limited (hereinafter referred to as 'the employer').

(ii) These two employees after rendering long years of service with the employer, the respondent in W.P.No.10450 of 2020 retired on superannuation on 31.05.2003 and the respondent in W.P.No.23764 of 2019 retired from service on superannuation on 30.04.2004. Before retirement, though it was claimed by the petitioner management that some proceedings were initiated against these employees for recovery of some amount, it is an admitted fact that, till they reached the superannuation and retired from service, those proceedings had not been conducted further or concluded.

(iii) Even at the time of their superannuation, admittedly, their services had not been retained by the petitioner employer, for the purpose, if any proceedings initiated against these employees for recovery of any amount.

(iv) With the said background, after retirement of these employees, it seems that, the recovery proceedings initiated or proceedings initiated, which ended or culminated in recovery, came to be concluded only well after the retirement on superannuation of these employees.

(v) Therefore, the employees by virtue of the said conclusion arrived at by the employer themselves since the service benefits or retirement benefits had not been paid to these employees, approached the Labour Court by filing computation petitions in C.P.No.66 of 2009 and C.P.No.65 of 2009 before the Labour Court, Coimbatore, where, the Labour Court, by separate order dated 10.09.2018, allowed the CPs by directing the petitioner employer to release the retirement benefits payable to the respective employees. Aggrieved over the said order passed in respective CPs by the Labour Court, these two writ petitions accordingly were filed by the petitioner employer with the aforesaid prayer.

4. Heard Mr.P.Paramasiva Doss, learned Standing Counsel appearing for the petitioner Corporation, who would submit that, these employees retained in the service till 2003 and 2004. Well before their retirement, during their services, proceedings were initiated for the purpose of finding out whether there has been any loss sustained by the petitioner Corporation, for which, recovery has to be made from these employees, however, subsequently, on superannuation, these employees were retained even after retirement and that was continued, therefore since the amount have to be recovered as found out by the employer, the employees are not entitled to get the relief of the retirement benefits, as they claimed before the Labour Court under Section 33C(2) by way of computation petition, as referred to above, therefore, since this issue has not been considered by the Labour Court in proper perspective and accordingly, since the impugned orders have been passed erroneously, challenging the same, the present writ petitions have been filed and therefore, the petitioner seeks indulgence of this Court against the impugned orders, he contended.

5. However, Mr.Ajoy Khose, learned counsel appearing for the respondent employees would contend that, first of all the services of the employees have not been retained for the purpose of initiation or continuation of disciplinary proceedings, which, according to the employer, culminated in recovery proceedings.

6. The learned counsel for the respondent employees would further contend that, whatever be the reason, as per the law declared by the Hon'ble Supreme Court in State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334, the employer is not entitled to recover any amount under four circumstances mentioned therein in para 18 of the judgment. Therefore, on that ground also, the petitioner employer is not entitled to seek for recovery from the employees. Therefore, on that ground, for such alleged recovery from the employees, the retirement benefits, whatever accrued to the petitioner, cannot be retained. Therefore, the employees since have rightly approached the Labour Court by way of computation petition under Section 33C(2) of the Industrial Disputes Act, 1947 and the same since have been considered and decided in proper perspective by the Labour Court through the impugned order, the same do not require any interference from this Court.

7. I have heard the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

8.As has been rightly pointed out by the learned counsel appearing for the respondent employees, admittedly, the services of the employees have not been retained on their retirement on superannuation for the purpose of initiation or for the purpose of continuing the proceedings if any, which culminated in recovery proceedings.

9.Moreover, as rightly pointed out by the learned counsel appearing for the respondent employees, the Hon'ble Supreme Court has laid down the law in the aforesaid judgment (2015) 4 SCC 334, where, in para 18, the Hon'ble Supreme Court has held as follows:

"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."

10.In view of the law having been declared and which is the law binding on all authorities, in view of Article 141 and 142 of the Constitution of India, this Court has no hesitation to implement the settled legal position as per the order passed by the Hon'ble Supreme Court in the aforesaid decision, as no employer would be entitled to act contrary to such decision and therefore, no recovery would be permissible from the respondent employees under any such circumstances or heads, which have been enumerated in the aforesaid orders. In that view of the matter,

this Court feels that, there is absolutely no infirmity attached with the order passed by the Labour Court in the computation petition filed respectively by these employees which are impugned herein. Accordingly, this Court feel that, the impugned orders are liable to be sustained and they do not require any interference from this Court.

11.If any amount is deposited pursuant to the direction given by this Court during the pendency of the writ petition before the Labour Court, the said amount can very well be withdrawn by the respondent employees by filing a formal petition before the Labour Court and once such petition is filed, the same can be considered and allowed on merits by the Labour Court within a period of 30 days from the date of such filing.

12.Resultantly, these writ petitions fail and therefore, they are liable to be dismissed, accordingly are dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sgl
To

The Presiding Officer,
Additional Labour Court,
Coimbatore.

W.P.No.23764 of 2019 and
W.P.No.10450 of 2020

cp (CO)
rv (03/02/2021)

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