



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.08.2020

DELIVERED ON : 11.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P. (MD)Nos.20451 & 21048 of 2014

and M.P. (MD)Nos.1 & 2 of 2014 and 1 of 2015

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W.P. (MD)No.20451 of 2014

Mathikanthan

... Petitioner

Vs.

1.The Director General of Police,
Chennai.

2.The Superintendent of Police,
Trichy District.

3.The General Manager (HR),
Bharath Heavy Electrical Limited,
Trichy - 620 014.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the second respondent in Na.Ka.K4/LR103/2014 M.Order No.832/2014, dated 13.11.2014 and quash the same as illegal and arbitrary

For Petitioner: Mr.P.Ganapathi Subramanian

For R1 & R2 : Mr.D.Muruganandam,
Additional Government Pleader.

For R3 : Mr.A.V.Arun

W.P. (MD)No.21048 of 2014

1.M.Sudhakar
2.A.Arockiadass Arunkumar
3.R.Karuppiah
4.V.Senthilkumar
5.K.Senthilkumar
6.S.Ravikumar
7.R.Sivamuthukumaran
8.S.Peter Devadass
9.K.Rajadurai
10.A.Mariappan

... Petitioners



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Chennai.

2.The Superintendent of Police,
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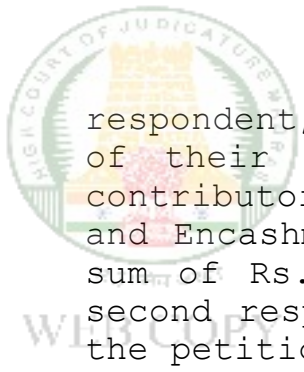
For R3 : Mr.A.V.Arun

COMMON ORDER

As the relief sought for by the similar placed persons, both the cases are taken together, heard together and dispose of by this common order.

2.The petitioners have joined in Tamil Nadu Police Service as Grade II Constable and have completed the training and probation period of two years and they are posted in Tamil Nadu Special Police and subsequently joined in Armed Reserve in various Districts.

3.At that time the third respondent / Bharath Heavy Electrical Limited, Trichy invited applications from eligible candidates fro the post of Sub Inspector Grade III (Security) in the year 2011. While applying for the above said post of Sub Inspector Grade III (Security), the petitioners have also enclosed the 'No Objection' Certificate issued by the second respondent for applying the said post. Appointment to the petitioners as Sub Inspector Grade III(Security) and they submitted their resignation to the second respondent and the same was accepted by the second respondent on 25.04.2012 and permitted the petitioners to join duty in the office of the third respondent. Since the petitioners joined to the third respondent's office in accordance with law, their resignation should be treated as a "Technical Resignation". After the petitioners were relieved from the office of the second



respondent, they applied for the benefits due to them on account of their technical resignation. The petitioners eligible for contributory pension amount, Service Gratuity, Retirement Gratuity and Encashment of leave salary. The second respondent credited a sum of Rs.60,450/- towards the encashment of leave salary. The second respondent released the leave salary of Rs.60,450/- due to the petitioners.

4.After all the petitioners have joined in the third respondent administration, the second respondent had issued letter to the third respondent calling upon the third respondent to detect the amount mentioned therein from the salary and remit to the second respondent. Pursuant to the date of appointment, the recovery order was passed as under:

வ.எண்.	பெயர் / பதவி	பணிபுரிந்த இடம்	ராஜினாமா செய்த தேதி	இறுதிநிலை ஈட்டிய வீடுபடி தொகை
01.	திரு.செந்தில் குமார் PC 119	AR/Trichy	15.03.2012	Rs.79,705 / -
2	திரு.K.செந்தில் குமார் PC 375	AR/Trichy	15.03.2012	Rs.71,184 / -
03.	திரு.A.ஆனந்தகிருஷ்ணன் அருணாசலம் PC 2987	AR/Trichy	15.03.2012	Rs.88,761 / -
04.	திரு.R.கருப்பையா PC 246	AR/Trichy	15.03.2012	Rs.65,444 / -
05.	திரு.A.மாணியப்பன் PC 3008	AR/Trichy	15.03.2012	Rs.42,163 / -
06.	திரு.S.ரவிகுமார் PC 1184	AR/Trichy	15.03.2012	Rs.43,137 / -
07.	திரு.S.மீட்டர் தேவதாஸ் PC 643	AR/Trichy	15.03.2012	Rs.58,590 / -
08.	திரு.K.ராஜதுரை னை 157	AR/Trichy	15.03.2012	Rs.1,11,026 / -
09.	திரு.M.கதாசர் PC 1699	AR/Trichy	15.03.2012	Rs.71,545 / -
10.	திரு.R.சிவமூர்த்தி குமாரன் PC 431	AR/Trichy	15.03.2012	Rs.70,089 / -
11.	திரு.K.மதிசுந்தரன் PC 2980	AR/Trichy	24.04.2012	Rs.60,450 / -

5.The third respondent filed counter stating that in the absence of any Court order, they cannot detect amount and it is not permissible to give effect to any detection from the salary unless the same is supported by the authorization by the employees. Further, the third respondent also stated that he could not act upon the direction of the second respondent to detect wrongly credited salary amount from salary of the petitioners herein. According to the third respondent, the third respondent is a Government of India Undertaking and it is bound by



the statutory provisions in effecting salary payments to its employees, as per the provisions of Payment of Wages Act.

6.The learned counsel appearing for the petitioners would contend that since the petitioners are no longer in service of the second respondent having resigned their job, the second respondent has no authority to pass order of recovery.

7.Per contra, the learned Additional Government Pleader relied upon G.O.Nos.408 and 209 stated that leave salary cannot be granted in respect of the person who have resigned the post and relied on Police Standing Order Section No.34 (2) and the Tamil Nadu Leave Rules, 1933.

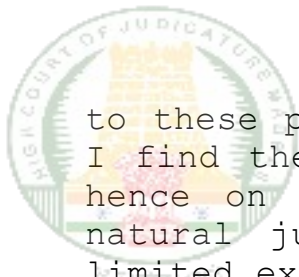
8.In reply, the petitioners' counsel submitted that the reasons stated by all the petitioners are technical reasons and hence they are entitled for leave salary and relied upon the Official Memorandum issued by the Government of India dated 26.12.2013.

9.In reply to the reply of the petitioner, the learned Additional Government Pleader submitted that plea of technical resignation is applicable only when the petitioners move from the same Department or any other Department of State or Central Government and as such the petitioners have appointed in an organisation of the third respondent, which is Government of India Undertaking, it is separate Organisation by itself and hence, plea of technical resignation is not applicable to them.

10.It is to be stated that on the advertisement given by the third respondent, these petitioner have applied for the post of Sub Inspector Grade III, after getting necessary permission from the second respondent. On their selection they have resigned the job and joined in the third respondent organisation and applied for terminal benefits. Leave salary was encashed and payment has been made as indicated above. In view of the above referred G.O.Nos.408 and 209, leave salary cannot be granted in respect of the persons, who have resigned the post.

11.In this regard, my attention was drawn to the Rule 35 as to the confirmation of resignation. Police Standing Order 34(2) was also relied upon. I find that the Tamil Nadu Leave Rules, 1933 is squarely applicable to the service matrix of the petitioners.

12.All these petitioners have previously worked in the Police Department are governed by the Police Standing Order Rule 34(2). It is remained to be stated that based upon the instruction, recovery of encashment of leave salary was passed by the second respondent. However, no show cause notice was issued



to these petitioners before passing the impugned order and hence, I find there is violation of principles of natural justice and hence on the technical plea of violation of the principles of natural justice, I am inclined to allow this petition to the limited extent alone.

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13.The impugned order passed by the second respondent directing the third respondent to detect the amount, is hereby set aside and the matter is remitted back to the file of the second respondent to pass fresh order, after affording opportunity of being heard on either side by person or through representation of the petitioner. The contention of the both the parties are left open.

14.The writ petitions are partly allowed to the extent as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gns

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Director General of Police,
Chennai.

2.The Superintendent of Police,
Trichy District

Order Made in
W.P. (MD) Nos.20451 & 21048 of 2014
11.09.2020

KM (21.09.2020) 5P 3C