

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.19124 of 2005 and W.M.P.No.20675 of 2005

L.K.Krishnan

... Petitioner

-Vs-

1. The Director of Family Welfare
Chennai 600 006.
2. The Deputy Director of Medical and
Rural Health Services and Family Welfare
Vellore, Vellore District.
3. The Block Medical Officer, PHC,
Natrampalli, Vellore District. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari to call for the records relating to the impugned order of the third respondent in Rc.No.514/A1/2004 dated 16.02.2005 and quash the same.

For Petitioner : Mr.P.Mohanraj

For Respondents : Ms.Bhuvaneswari,
Addl.Govt.Pleader

सत्यमेव जयते
O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records relating to the impugned order of the third respondent in Rc.No.514/A1/2004 dated 16.02.2005 and quash the same.

2. The petitioner herein was working as Block Extension Educator, Government Primary Health Centre, Natrampalli, Vellore District and on attaining superannuation, he retired on 31.08.2003. He was initially appointed as Family Welfare Worker and was promoted to the post of Computer. He opted to have his pay fixed in the promotive post with effect from 01.07.1986 after earning his increment in the lower post. Subsequently,

he was promoted as Block Extension Educator, where he joined on 31.12.1993. Since the petitioner opted to have the pay fixed in the promoted post from 01.07.1994 after earning the increment in the lower post as provided under FR 22 (1)(a)(i) from 31.12.1993 to 30.06.1994 and FR 22(B) with effect from 01.07.1994, his pay was fixed accordingly.

3. At that juncture, since he attained superannuation, he retired from service on 31.08.2003 peacefully. After his retirement, the impugned order dated 16.02.2005 has been passed, whereby the third respondent has sought to recover a sum of Rs.1,00,687/- from the petitioner as if that it has been excess pay or allowance paid to him for the period 01.04.1987 to 31.08.2003. According to the learned counsel for the petitioner, prior to the passing of the impugned order, no opportunity was given to the petitioner to explain and moreover almost two years after retirement the impugned order of recovery has been issued by the third respondent and therefore challenging the same this writ petition was filed.

4. During the pendency of the writ petition, the petitioner had enjoyed the order of stay of the recovery ie., the impugned order and till date no recovery has been made. However, in this regard it has to be noted that, at the time of disbursing the retiral benefits the said amount as has been quoted in the impugned order ie., Rs.1,00,687/- was retained by the respondents for the purpose of recovery and the same has not so far been recovered in view of the pendency of this writ petition, where there has been a stay order.

5. In this context, learned Additional Government Pleader Ms.Bhuvaneswari appearing for the respondents would submit that, since there has been excess pay for a particular period ie., from 01.04.1987 to 31.08.2003, the same is liable to be recovered from the petitioner and in this regard, even though he superannuated and retired from service, the respondents have got every right to recover the same and therefore the said order which is impugned herein dated 16.02.2005 cannot be said to be an unlawful one. Insofar as the ground raised by the petitioner that, no opportunity had been given to the petitioner before passing the impugned order, the learned Additional Government Pleader would submit that, since during the relevant period the petitioner had been paid excessively and that is borne out on record, based on which only the impugned order is passed and therefore the question of giving a separate opportunity of being heard to the petitioner does not arise in this case. Accordingly, the said ground raised by the petitioner cannot be countenanced.

6. I have considered the said rival contentions by the learned counsel on either side and have perused the materials placed on record.

7. It is an admitted case that the petitioner attained superannuation on 31.08.2003 and at the time of retirement, he was permitted to retire peacefully thereby no proceedings was initiated against the petitioner for the recovery of any alleged excess payment as has been quoted in the impugned order.

8. After retirement, separately this order has been passed on 16.02.2005 ie., more than 1½ years after the superannuation and retirement of the petitioner, that too without any opportunity of being heard to the petitioner admittedly.

9. In this context, the learned counsel for the petitioner relied upon the dictum of the Honourable Apex Court reported in 2014 (8) S.C.C.833 "State of Punjab v. Rafiq Masih (White Washer)", wherein it was held as follows.

" 7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India,

even in the preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracized section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimizing monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the

corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

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12. 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 by the Honourable Apex Court, the said proposition has been followed in number of cases and this court has passed several orders in that line as to the four situations and the occasions mentioned in

the aforesaid order of the Honourable Apex Court. Therefore, applying the principles laid down by the Honourable Apex Court, this Court is of the view that the impugned order cannot be sustained and it is liable to be quashed.

11. In the result, the impugned order is quashed. Consequently if any amount payable to the petitioner from out of the retiral benefits is retained by the respondent Department, the same shall be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Director of Family Welfare,
Chennai 600 006.
2. The Deputy Director of Medical and,
Rural Health Services and Family Welfare,
Vellore, Vellore District.
3. The Block Medical Officer, PHC,
Natrampalli, Vellore District.

+1cc to the Government Pleader Sr.190

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