



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.11244 of 2011

and

M.P. (MD)No.2 of 2011

WEB COPY

V.Valliappan

... Petitioner

Vs.

The Senior Manager,
Pandyan Grama Bank,
Personnel Administration Department,
No.2-70-1, Collectorate Complex,
Virudhunagar-626 002.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the respondent vide proceedings in Personnel Administration Department/PAD/182/11-12, dated 27.08.2011, quash the same and consequently direct the respondent to pay 45 days of privilege leave encashment to the petitioner.

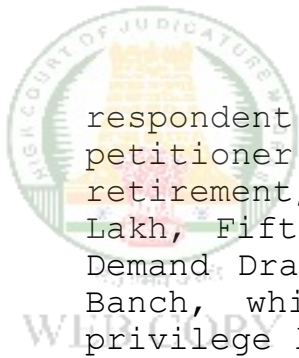
For Petitioner	:	Ms.D.Geetha
For Respondents	:	Mr.K.Srinivasa Murthy for Mr.M.P.Senthil

ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the respondent, vide proceedings in Personnel Administration Department/PAD/182/11-12, dated 27.08.2011, quash the same and consequently direct the respondent to pay 45 days of privilege leave encashment to the petitioner.

2. The case of the petitioner is that the petitioner served in the respondent Bank in various capacities for more than 30 years and he retired from service of the respondent Bank on 30.06.2009 while he was working in the Palanganatham branch. Further, the petitioner had 182 days of privilege leave as on 01.01.2007, 175 days of privilege leave as on 01.07.2007 and 160 days of privilege leave as on 01.07.2008, which was revealed by the letter of the respondent dated 05.02.2007, 20.08.2007 and 12.09.2008.

3. Further, the Government of India, vide letter dated 07.01.2009 allowed additional sick leave to employees of RRBs as per entitlements of the employees of their sponsor banks with effect from 19.10.2005 and based on that, the petitioner's leave salary was settled immediately after retirement. The Senior Manager of the



respondent Bank, vide his order dated 30.06.2009 permitted the petitioner to retire from service on 30.06.2009. At the time of his retirement, the respondent paid a sum of Rs.1,52,365/- (Rupees One Lakh, Fifty Two Thousand, Three Hundred and Sixty Five only), vide Demand Draft NO.212514, drawn on Pandyan Grama Bank, Palanganatham Banch, which is now renamed as Tamil Nadu Grama Bank, towards privilege leave encashment.

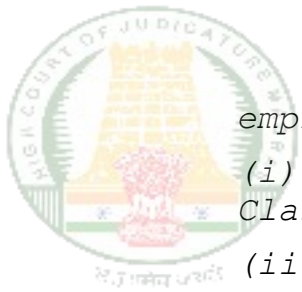
4. After retirement, the petitioner expected the respondent to credit 90 days medical leave to privilege leave account. As there was no response from the respondent, the petitioner sent a representation to the respondent dated 29.12.2010, The respondent, vide his letter dated 06.05.2011, sent a Demand Draft for a sum of Rs.19,800/- (Rupees Nineteen Thousand and Eight Hundred only) being the privilege leave encashment arrears payable to the petitioner as per Bipartite Settlement.

5. After the settlement of the above amount, the respondent, vide the impugned order dated 27.08.2011, informed that 100 days of leave has been ordered to his privilege leave account and that privilege leave encashment was paid for 141 days and the actual number of days in privilege leave account was 92 days only and as the privilege leave encashment has been paid in excess of 49 days to the tune of Rs.60,914.75/- and hence, the above said impugned order was passed for the recovery of the said amount. Challenging the same, the present writ petition is filed by the petitioner.

6. Learned Counsel appearing for the petitioner would submit that after retirement, there is no master and servant relationship for ordering recovery and in the present case, no notice was issued before passing the impugned order and without seeking any explanation from the petitioner, the respondent straight away passed the impugned order, which is unsustainable one. Further, without any misappropriation, any amount paid to the employer by the employee cannot be recovered and hence, the learned Counsel appearing for the petitioner would pray for setting aside the order of the respondent.

7. In support of his contentions, the learned Counsel appearing for the petitioner would rely upon the decision of the Honourable Supreme Court in **State of Punjab and Others etc., Vs. Rafiq Masih (White Washer) etc.**, reported in **(2015)4 SCC 334**, wherein the Honourable Supreme Court held as follows:

"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.

13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."

8. Per contra, learned Counsel appearing for the respondent would submit that inadvertently the respondent authority calculated the leave encashment and paid the excess amount and that excess amount has to be recovered, for that admitted fact, there is no need to issue show cause notice and hence, the respondent authority ordered for repaying the excess amount paid to him, which cannot be interfered with. He would further submit that the decision relied upon by the learned Counsel appearing for the petitioner is only applicable to Grade-C and Grade-D employees and not for officers of the Bank and accordingly, the learned Counsel appearing for the respondent would pray for dismissal of the writ petition.

9. Learned Counsel appearing for the respondent would also rely upon a decision of the Division Bench of this Court in **the Commissioner, Madurai Corporation, Madurai Vs. M.H.Sekar [W.A. (MD) No.1154 of 2018, dated 25.09.2018]**.

10. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent and perused the



materials placed on record.

11. The facts relating the present case are not in dispute. Admittedly, the petitioner retired from service in the year 2009 and the impugned order was passed in the year 2011. On a perusal of the impugned order would reveal that before passing impugned order, no notice was issued to the petitioner by the respondent, which is clearly against the principles of natural justice.

12. Further, from the citation relied upon by the learned Counsel for the petitioner it is made clear that if any misappropriation is made by the employee, a recovery can be made after the retirement, however, in the present case, there is no misappropriation. The respondent authority only has made the alleged wrong calculation and not the petitioner.

13. On a perusal of the decision relied upon by the learned Counsel appearing for the respondent, it would reveal that in that case, the excess pension amount awarded in favour of the deceased employee is sought to be recovered, for which undertaken was obtained from the employee and there is a provision available in the Pension Rules. Hence, the decision referred by the learned Counsel appearing for the respondent is not applicable to the present case on hand.

14. For the reasons stated above, the impugned order passed by the respondent, dated 27.08.2011 is liable to be set aside. Accordingly, the same is set aside. The Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

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.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-2454[F] dated 29/01/2021)

W.P(MD)No.11244 of 2011

27.01.2021

MJ(CO)

KB(15.02.2021) 4P 2C

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