



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2022

CORAM :

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THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.7435 of 2020 and
WMP(MD) Nos.6889 to 6891 of 2020

M.Pavalakannan

...Petitioner

Vs.

1.The State of Tamilnadu,
Rep by its Secretary,
Tamil Development Department,
St.George Fort,
Chennai - 9.

2.The Vice Chancellor,
Tamil University,
Thanjavur,
Thanjavur District.

3.Tamil University,
Rep by its Registrar,
Tamil University,
Thanjavur,
Thanjavur District.

4.The Assistant Director,
Local Fund Audit,
Tamil University,
Thanjavur,
Thanjavur District.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders issued by the third respondent in his proceedings in ந.க.எண்.ஆ3/1087/2020, dated 03.06.2020 and consequential impugned recovery order issued by the third respondent in his proceedings in ந.க.எண்.ஆ3/1087/2020, dated 23.06.2020 and quash the same as illegal and consequentially to direct the respondents to pay the retirement benefits by taking into account of the last drawn pay received in the cadre of Plate Maker within the period that may be stipulated by this Court.

For Petitioner

:Mr.C.Venkatesh Kumar for
M/s. Ajmal Associates



For R1

:Mr.A.Kannan

Additional Government Pleader

For R2 to R4

:Mr.Ragatheesh Kumar

For M/s. Isaac Chambers

ORDER

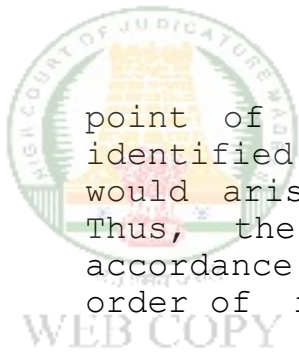
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This writ petition is filed as against the order of reversion and the order of recovery passed by the third respondent in ந.க.எண்.ஆ3/1087/2020, dated 03.06.2020 ந.க.எண்.ஆ3/1087/2020, dated 23.06.2020 respectively.

2.The case of the petitioner is that the petitioner is a retired Plate Maker, who worked in Publication Department under the third respondent University. Initially, he was appointed as Assistant Plate Maker cum Machine Man on 23.05.1984 and he was upgraded as Plate Maker cum Machine Man on 23.05.1991 and he was upgraded as Selection Grade Plate Maker cum Machine Man on 23.05.1998. According to the petitioner, based on the demand for time bound promotion made by the non teaching staff of the University, the third respondent appointed a Norms Committee and based on the report submitted by the Norms Committee, resolution has been passed by the Syndicate in its Resolution No.97.80, dated 10.12.1997, by which, all non teaching staffs of the respondent University were to get time bound promotion once in seven years as done in other Universities and consequent to such resolution, the second respondent, by his proceedings, dated 01.01.1998, promoted the petitioner as Plate Maker-cum-Machine Man in the time scale of pay Rs.1200- 30-1560-40-2040 w.e.f.23.05.1991 and pay benefits has been fixed w.e.f 01.10.1996. The petitioner was retired from service on 30.04.2020, on attaining the age of superannuation as Plate Maker (Selection Grade Plate Maker cum Machine Man).

3.The grievance of the petitioner is that the third respondent by his proceedings dated 03.06.2020 cancelled the time bound promotion given to the petitioner and ordered for recovery of excess amount paid to the petitioner from 01.10.1996 to 30.04.2020 and by the order dated 23.06.2020, the third respondent passed a re-fixation order and directed to recover a sum of Rs.20,17,786/- from the petitioner, based on the audit objection raised by the fourth respondent. Further grievance of the petitioner is that the orders impugned in this writ petition have been passed even without giving an opportunity of personal hearing. Hence, the impugned orders are liable to be quashed. To substantiate his contentions, the learned counsel has relied upon the order passed by this Court in W.P(MD) No.3230 of 2007, dated 02.03.2012 and the Judgment passed by the Division Bench of this Court in W.A(MD) No.145 of 2013, dated 14.03.2018, wherein, similar relief has been granted by this Court.

4.The learned Additional Government Pleader appearing for the respondents opposed the contention raised by the petitioner's counsel by stating that the audit objections can be placed at any



point of time and certain omissions and commissions may not be identified immediately and the cause of action for imposing recovery would arise only after identifying the errors during the Audit. Thus, the respondents have issued the order of recovery in accordance with law. Hence, there is no need to interfere with the order of recovery.

5. Admittedly, the petitioner retired from service on 30.04.2020 and no notice or opportunity was provided to the petitioner before issuing the impugned order of recovery. Thus, the order impugned is in violation of principles of natural justice. This apart, the writ petitioner was allowed to retire from service on attaining the age of superannuation. In these circumstances, recovery cannot be imposed on the retired employees in view of certain audit objection.

6. In this regard, the Hon'ble Supreme Court of India also enumerated the legal principles in the case of **State of Punjab v. Rafiq Masih reported in (2015) 4 Supreme Court Cases 334** in paragraph No.18 of the judgment is relevant and the same 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- i. Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- ii. Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- iii. Recovery from the 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,*

<https://hcservices.ecourts.gov.in/hcservices/> iniquitous or harsh or arbitrary to such an



extent, as would far outweigh the equitable balance of the employer's right to recover."

7. The Apex Court states that recovery in respect of retired employees are impermissible. Further, in this case, no notice was issued to the writ petitioner before passing the impugned order of recovery. This Court is of the opinion that now there is no purpose in remitting the matter for reconsideration, in view of the fact that the petitioner was already retired from service.

8. In this view of the matter, the impugned order passed by the third respondent in ந.க.எண்.ஆ3/1087/2020, dated 03.06.2020 and in ந.க.எண்.ஆ3/1087/2020, dated 23.06.2020 are hereby quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (As)

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Sub Assistant Registrar(CS)

vrn

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 Secretary,State of Tamil Nadu,
Tamil Development Department,
St.George Fort,
Chennai - 9.

2.The Vice Chancellor,
Tamil University,
Thanjavur,
Thanjavur District.

3.The Registrar,
Tamil University,
Tamil University,
Thanjavur,
Thanjavur District.



4.The Assistant Director,
Local Fund Audit,
Tamil University,
Thanjavur,
Thanjavur District.

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+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-783[F] dated 07/01/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-1054[F] dated
10/01/2022)

+1 CC to M/s.SPL.GP (SR-802[F] dated 07/01/2022)

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MGJ(18.04.2022) 5P 8C