



W.P.No.15414 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.15414 of 2011

P.Sundararajulu

... Petitioner

Vs

1.Government of Tamil Nadu,
Represented by the Secretary,
Tamil Development, Hindu Religious
And Information Department,
Secretariat, Fort St.George,
Chennai – 9.

2.The Secretary,
To Government of Tamil Nadu,
Public (Special.B) Department,
Secretariat, Fort St.George,
Chennai – 9.

3.The Pension Pay Officer,
Pension Pay Office,
Chennai – 6.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the order relating to the orders of the 1st respondent in G.O.Ms (2D)

Page No: 1/13



W.P.No.15414 of 2011

No.9, Tamil Development Religious Endowments and Information Department, dated 02.04.2011, order of the 2nd respondent in Letter No.3021/Special.B/2009-14, Public (Special.B) Department, dated 29.04.2011 and Proceedings of the 3rd respondent in Na.Ka.No.12570/J2/2011 dated 10.05.2011 and quash the same and pass such further orders.

For Petitioner : Mr.Kandhan Duraisami

For Respondents : Mr.A.M.Ayyadurai
Government Advocate

ORDER

This Writ Petition has been filed by the petitioner challenging the order passed by the 1st respondent in G.O.Ms (2D) No.9, Tamil Development Religious Endowments and Information Department, dated 02.04.2011, order of the 2nd respondent in Letter No.3021/Special.B/2009-14, Public (Special.B) Department, dated 29.04.2011 and Proceedings of the 3rd respondent in Na.Ka.No.12570/J2/2011 dated 10.05.2011 and quash the same

Page No: 2/13



W.P.No.15414 of 2011

WEB COPY

2. The case of the petitioner is that he has been functioning as an Under Secretary to the Government in the Home Department and that he was placed under suspension with effect from 02.09.1989 on the ground that the enquiry under the grave charges contemplated against him. The said order of suspension was revoked on 03.10.1999 based upon the orders issued by the Tamil Nadu Administrative Tribunal. Again the petitioner was placed under suspension. On 26.12.1991 he had attained the age of superannuation on 31.01.1993. He had earlier approached the Tamil Nadu Administrative Tribunal challenging the order of suspension and by an order dated 08.04.2002, the Tribunal had directed the Government to reinstate the petitioner in service with all attendant benefits. Thereafter, by order, dated 10.06.2005, the respondent had permitted the petitioner to retire with effect from 31.01.1993 and by a further order, dated 07.04.2006 and his period of suspension from 1989 to 1991 was directed to be regularised. The petitioner was also notionally promoted as Deputy Secretary on and from 03.08.1990 and thereafter, as Joint Secretary

Page No: 3/13



W.P.No.15414 of 2011

WEB COPY

from 07.09.1992 by an order dated 18.10.2007. The pecuniary benefits were all settled to the petitioner on 21.07.2008. Since there was a delay in payment of pecuniary benefits, the petitioner made an application in November 2008, seeking for payment of interest on the delayed payment. By communication dated 24.07.2009, the respondent had granted interest for the delayed payment of death cum retirement gratuity. But, did not grant any interest on the other belated payments. Therefore, by further representations, the petitioner had approached the Government. However, the same was rejected by an order dated 28.08.2009. The petitioner had challenged the same in W.P.No.21661 of 2009. By an order dated 12.07.2010, this Court had disposed the said Writ Petition by quashing the order dated 28.08.2009 and directed payment of interest at the rate of 10% for the delayed payment of terminal benefits. By G.O.Ms.No.870 Public (SPECIAL B) Department, dated 17.09.2010, the Government had sanctioned payment of 10% interest on certain heads alone, which made the petitioner to initiate contempt proceedings in

Page No: 4/13



W.P.No.15414 of 2011

Cont.P.No.5171 of 2011. Thereafter, further payments were made through ECS on 04.01.2011.

3. But, however, by G.O.2D, dated 02.04.2011, an order of recovery was sought to be made on the contention that there was an excess payment of Rs.1,31,937 that had been wrongly paid to the petitioner and had called upon him to repay the amount in one installment. Similarly, another order of recovery of an excess amount paid under the head of Pension arrears is claimed to have been made by the Department and the same has also sought to be recovered from the petitioner at the rate of Rs.2,111/- per month from the pension payable to him. Challenging the same, the petitioner had preferred this Writ Petition.

4. Mr.Kandhan Duraisami, learned counsel appearing for the petitioner would submit that the petitioner was wrongly proceeded

Page No: 5/13



W.P.No.15414 of 2011

WEB COPY

with by initiating a vague disciplinary proceedings which came to be the subject matter of various orders of the Tamil Nadu Administrative Tribunal. Even though, the Tribunal had passed orders in the year 2002 directing the payment of terminal benefits to the petitioner on the date of his superannuation ie.,31.01.1993. The Department had belatedly made payments only in the year 2005 and 2006 for which the petitioner is entitled for interest under the statute. Therefore, he had made a claim, entertaining his claim, the Government by an order had directed the payment to the petitioner. Such payment was made by the Government themselves and there was no contribution on the side of the petitioner for the alleged excess payment made by the Government. When that be so, he would contend that there could be no recovery proceedings initiated against the petitioner. In support of his contention, he would heavily rely upon the judgment of the Hon'ble Apex Court in the case of ***State of Punjab and Others Vs Rafiq Masih & Others*** reported in ***(2015) 4 SCC 334*** (White washer's case)

Page No: 6/13



W.P.No.15414 of 2011

WEB COPY

5. Countering his arguments, learned Government Advocate would heavily contend that the excess payment was due to the conduct of the petitioner in suppressing the material facts such as payment of Subsistence Allowance which had made the Government to pay an excess payment apart from payment of excess interest. On finding of the said fact of excess payment upon which the excess interest has also been calculated and paid to the petitioner, recovery proceedings have been initiated immediately.

6. He would vehemently contend that the petitioner being a Government servant should not be allowed to unjustly enrich himself of the money belonging to the public exchequer and therefore, he would submit that the Writ Petition may be dismissed and the Government be allowed to recovery the excess payment and also the excess interest on the excess payment to the petitioner.

Page No: 7/13



W.P.No.15414 of 2011

WEB COPY

7. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

8. It is an admitted case that the petitioner had been belatedly paid his terminal and other benefits which he was entitled to on the date of his superannuation which was on 31.01.1993. It is also not disputed by the Government that the petitioner is entitled for interest on the belated payment. But, the claim of the Government is that in calculating the payment of arrears to the petitioner, the petitioner had suppressed the payment of subsistence allowance which would have to be deducted and paid. It is very surprising that such an contention is being made by the Government. The Government being the employer is duty bound to pay the Subsistence Allowance. It is also very shocking that the Government had not kept the record of payment of Subsistence Allowance to the petitioner. If, it had been cautious while calculating the payment of arrears and other terminal

Page No: 8/13



W.P.No.15414 of 2011

WEB COPY

benefits it would have definitely found out that there has been Subsistence Allowance payment paid to the petitioner which ought to be deducted from the payment of arrears and this situation would have not been arisen till. Therefore, it is a clear lethargy on the part of the Government in not calculating the arrears and the other payment for which the petitioner is entitled for.

9. As rightly pointed out by the learned counsel for the petitioner, any wrongful payment made by the employer even mistakenly would not be entitled to recovered as has been held by the Hon'ble Apex Court reported in **(2015) 4 SCC 334**. For better appreciation of fact, the relevant portion of the said judgment 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 herein above, we may, as a ready

Page No: 9/13



WEB COPY



W.P.No.15414 of 2011

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, 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. Admittedly, the petitioner had retired from service in the year 1993 and he shall be covered by the benefit that had been



W.P.No.15414 of 2011

WEB COPY

extended by the Hon'ble Apex Court in Clause (2) of paragraph 18 referred to above.

11. In view of categorical pronunciation of law by the Hon'ble Apex Court which is binding upon this Court, I hold that the impugned recovery proceedings that had been passed by the Government could not be held to be valid and therefore, is liable to be set aside.

12. In fine, this Writ Petition is allowed and the impugned orders in this Writ Petition is set aside. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02.11.2023

gba

Index : Yes/No

Speaking order : Yes/No

Page No: 11/13



W.P.No.15414 of 2011

Neutral Citations : Yes/No

WEB COPY

To

- 1.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai – 600 002.
- 2.The Superintending Engineer/Admn.,
Kundah Generation Circle,
Kundah Palam, Manjur,
Kundah, Nilgiris District.
- 3.The Executive Engineer,
T.N.E.B./Moyar Power House,
E.B.Camp, Moyar, Nilgris District.
- 4.The Asst. Executive Engineer/Operation (Elee),
E.B.Camp, Moyar Power House,
Nilgris District.

K.KUMARESH BABU,J.

Gba



WEB COPY



W.P.No.15414 of 2011

W.P.No.15414 of 2011

02.11.2023

Page No: 13/13