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W.P.Nos.7242 and 7243 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.7242 and 7243 of 2018

And

W.M.P.Nos.24218 and 24219 of 2018

Mr.V.Bakthavachalam ... Petitioner in W.P.7242/2018

Mr.A.Jagadeeswaran ... Petitioner in W.P.7243/2018

Vs.

The Assistant Provident Fund Commissioner (Pension)
Employees Provident Fund Organization
R-40A, T.N.H.B. Complex, Mogappair East,
Chennai – 600 037. ... Respondent in both the W.Ps.

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for records of the order passed by the respondent in TN/RO/AMB/PENSION/SBI/201630-215043/2018 and TN/RO/AMB/PENSION/SBI/37556-215044/2018 respectively, dated 27.02.2018 and to quash the same and directing the respondent to pay the pension by counting the service spent in two establishment B&C Mills, Binny Limited, Perambur and Empkee Engineers Pvt. Limited, Ambatur Estate, Athipattu as a Qualifying Service forthwith as illegal.



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For Petitioners : Mr.P.Paramasiva Doss
For Respondent : Mr.V.Vijay Shankar

COMMON ORDER

The petitioners have filed these writ petitions seeking issuance of Writ of Certiorarified Mandamus to call for records of the order passed by the respondent in TN/RO/AMB/PENSION/SBI/201630-215043/2018 and TN/RO/AMB/PENSION/SBI/37556-215044/2018 respectively, dated 27.02.2018 and to quash the same and directing the respondent to pay the pension by counting the service spent in two establishment B&C Mills, Binny Limited, Perambur and Empkee Engineers Pvt. Limited, Ambatur Estate, Athipattu as a Qualifying Service forthwith as illegal.

2.Since the issue involved in these writ petitions are one and the same, they are heard together and disposed of by way of a common order.

3.The case of the petitioners is that the petitioners joined the service of B&C Mills, Binny Limited, Perambur as Tuners and served there from 01.06.1974 to 16.05.1998 and they were assigned with PF Account. Since B&C Mills was closed, the petitioners joined Empkee



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Engineers Pvt. Limited, Ambatur Estate, Athipattu on 01.10.1998 and retired on 28.02.2010 and 04.05.2008 respectively. The petitioners were paid two pension for their service rendered in two establishments separately, however, it was stopped abruptly without any rhyme and reasons. Hence, the petitioners approached the respondent and the impugned orders came to be issued. Challenging the same, the petitioners have filed these writ petitions.

4.The learned counsel appearing for the petitioners submitted that the petitioners retired from service on 28.02.2010 and 04.05.2008 respectively and after a lapse of nearly 8 years and 10 years respectively the impugned orders of recovery have been passed without issuing any show cause notice, which is not sustainable one. Further, any amount received by way of pension cannot be recovered as per the decision of the Hon'ble Apex Court reported in **(2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)**.

5.Per contra, the learned counsel appearing for the respondent submitted that the petitioners while joining the subsequent employment have failed to submit declaration in Form No.11 which is



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statutory declaration laid under para 34 of the EPF Scheme. While submitting application in Form No.10-D for grant of pension for the service rendered by them to the subsequent employer, have made self declaration in Column 17 of Form No.10-D as though they are not drawing pension under Employees Pension Scheme, 1995 and that the particulars given in the application are true and correct, from which, it is clearly evident that the petitioners suppressed the fact that they are already drawing pension under PPO. Since the petitioners are already drawing pension from the erstwhile employee, receiving pension from the subsequent employee is not sustainable one.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.The facts in the present case is not in dispute. Admittedly, the petitioners joined the service of B&C Mills, Binny Limited, Perambur as Tuners and served there from 01.06.1974 to 16.05.1998. Since B&C Mills was closed, the petitioners joined Empkee Engineers Pvt. Limited, Ambatur Estate, Athipattu on 01.10.1998 and retired on 28.02.2010 and 04.05.2008 respectively and after a lapse of nearly 8 years and 10



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years respectively, from the date of retirement the impugned orders of recovery have been passed without issuing any show cause notice, which is clear violation of principles of natural justice.

8.Further, any amount received by way of pension cannot be recovered as per the decision of the Hon'ble Apex Court reported in **(2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)**, the relevant portion of which, 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 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



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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."

9. Applying the ratio laid down by the Hon'ble Apex Court in the decision reported in ***(2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)***, this Court is inclined to set aside the impugned orders.



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10. Accordingly, the order passed by the respondent in TN/RO/AMB/PENSION/SBI/201630-215043/2018 and TN/RO/AMB/PENSION/SBI/37556-215044/2018 respectively, dated 27.02.2018 are set aside. These writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

30.08.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

The Assistant Provident Fund Commissioner (Pension)
Employees Provident Fund Organization
R-40A, T.N.H.B. Complex, Mogappair East,
Chennai – 600 037.



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