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W.A.No.875 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**W.A.No.875 of 2019
and C.M.P.No.6751 of 2019**

The Government of Tamil Nadu,
rep. by its Secretary,
Industries (MIA-I) Department,
Fort St. George, Chennai – 9.

... Appellant

Vs

1.AraKonam Ekhu Alai Anna
Thozhilalar Sangam,
(Regn. No.754/NAT),
rep. by its General Secretary,
S-1, 6th Street, Ekhu Nagar,
AraKonam – 631 004.

2.Tamil Nadu Steels Limited,
rep. by its Managing Director,
AraKonam – 631 004.

3.Tamil Nadu Industrial Development
Corporation Limited,
rep. by its Chairman-cum-M.D.,
19-A, Rukmani Lakshimipathy Salai,
Egmore, Chennai – 8.

.. Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 13.09.2006 made in W.P.No.5002 of 1999.

For Appellant : Mr.R.Kumaravel
Additional Government Pleader

For Respondents : No appearance

JUDGMENT

(Judgment of the Court was delivered by K.KUMARESH BABU,J.)

This intra-court appeal had been filed by the appellant as being aggrieved against the order of the learned Single Judge, wherein the learned Single Judge had quashed the portion of the Government Order in G.O.Ms.No.524 Industries (MIA1) Department dated 21.08.1998 wherein under the Voluntary Retirement Scheme, compensation given to the employees of the second respondent would be collected back in easy installment on their absorption in other public sector undertaking and had held that the Government is not entitled to claim back the compensation paid to the employees even after absorption.



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2.The Government Order that has been impugned in the writ petition was issued by the Government on 21.08.1998. The writ petition had been filed in the year 1999 and thereafter was disposed of by an order of this Court on 13.09.2006. The writ appeal seems to have been filed in the year 2009 but was numbered only in the year 2019. It is to be noted that the employees who had been given voluntary retirement under the second respondent Company and who would have been retired in the interregnum and it is almost 24 years when the said Government Order was passed and 17 years, the writ petition had been disposed of.

3.The Hon'ble Apex Court in the case of ***State of Punjab and Others Vs. Rafiq Mashri (White Washer) and Others*** reported in (2015) 4 SCC 334 held that no recovery can be made from the employees who have been already retired. The Hon'ble Apex Court in paragraph 182 of the judgment has held as follows:

“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 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.”



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4. In view of the aforesaid judgment, we do not find any infirmity in the order passed by the learned Single Judge and the writ appeal therefore fails. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

14.08.2023

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

cse

To

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