



WP.No.10549 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.10549 of 2015

M.Vasantha Mohan

S/o.Muthian

...Petitioner

Vs.

- 1.The Home Secretary, Government of Tamil Nadu,
Fort St George, Chennai-600 009.
- 2.The Additional Director of Prisons,
Chennai-600 008.
- 3.The Superintendent of Prisons
Central Prison, Coimbatore-18

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorari, directing to call for the records relating to the proceeding of the 3rd respondent dated 19.11.2014 issued in No.19473/PO5/2012 and quash the same.

For Petitioner : M/s.P.I.Thirumoorthy

For Respondents : Ms.R.L.Karthika

Government Advocate



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ORDER

The petitioner herein worked as Deputy Jailor in the Prison Department and he retired from service on attaining the age of superannuation on 31.01.2012. Thereafter, the impugned proceedings dated 19.11.2014, were issued by the 3rd respondent, ordering recovery of an amount of Rs.1,41,838/- from the pension payable to the petitioner. The said amount of Rs.1,41,838/- is purported to be a loss caused by the petitioner while he was working as Deputy Jailor during the years 2010-2011 and 2011-2012, due to the damages caused in respect of rice and vegetables accounted for by the petitioner. The impugned proceedings came to be issued by basing upon the circular issued by the Government on 23.04.2013, stating that the wastage is not allowed in respect of rice and vegetables. Therefore, the petitioner was held responsible for causing loss of Rs.1,41,838/-. As already noted above, the petitioner retired from service on 31.01.2012. It was only thereafter, the Government issued the circular on 23.04.2013. Further, once a Government servant retires from service, the relationship between employer and employee ceases to exist and any action that can be initiated or taken against the petitioner, must



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be strictly in accordance with Rule 9 of Tamil Nadu Pension Rules. The respondents have attempted to justify their action by placing reliance on the Rule 9 (1) (b) of Tamil Nadu Pension Rules. In terms of the said Rule 9 (1) (b), if any pecuniary loss is caused to the Government, recovery can be made, provided the pensioner of the Government Servant is found guilty of grave misconduct or negligence during the period of service, in any departmental or judicial proceedings. In the instant case, no departmental or Judicial proceedings were initiated while the petitioner was in service or even after his retirement. Only basing upon the objection raised by the Audit, the impugned proceedings came to be issued.

2. Admittedly, there were no departmental proceedings or judicial proceedings pending as on the petitioner's date of superannuation, nor there were any departmental or judicial proceedings initiated after the petitioner retired from service in accordance with the Rules, much less under Rule 17 (a) or 17 (b) of the Tamil Nadu Government Servants (Discipline and Appeal) Rules. Even if any such action has to be initiated, same can be done only by the Government, but not any



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Authority, once the Government servant has retired from service on attaining superannuation.

3. In the instant case, the impugned proceedings were issued only by the 3rd respondent. Since it is only the Government that is competent to initiate any Disciplinary proceedings or Departmental proceedings against a retired Government servant under Rule 9 (1)(b) of Pension Rules, the impugned proceedings issued by the 3rd respondent cannot be sustained under law for want of competence.

4. Yet another ground on which the impugned proceedings cannot be sustained is the basis for issuing the said proceedings in Circular No.25543/ஐ.ஈ.2./2012 dated 23.04.2013, which was admittedly issued after the petitioner has retired from service. Hence, for this reason as well, the impugned proceedings cannot be sustained.

5. Be that as it may. The scope of recovery of amounts from the employee who retired from service is dealt with by the Hon'ble Apex



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court in the case of ***State of Punjab vs Rafiq Masih*** reported in **2015 (4)**

SCC 334, wherein the Hon'ble Apex court held that:

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 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



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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.

6.From the above, it is clear that the recovery of amounts from the persons who retired from service, has been held to be impermissible by the Hon'ble Apex Court.

7.In the light of the above facts and ruling of the Hon'ble Apex Court, the impugned proceedings dated 19.11.2014 cannot be sustained and the same is accordingly set aside. In case, any amount had been recovered from the petitioner pursuant to the impugned order dated 19.11.2014, the same shall be refunded to the petitioner within a period of 8 weeks from the date of receipt of a copy of this order.



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8. Accordingly, the writ petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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vsn

Index: Yes/No

Speaking: Yes/No

Neutral case citation: Yes/No



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