



WEB COPY



WP No.30991 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

WP No.30991 of 2007

1.The Union of India

Represented by the Joint Director Estt.[P&A]
Railway Board, New Delhi.

2.The Senior Divisional Personnel Officer/MAS

Divisional Railway Manger's Office,
Personnel Branch, Chennai Division,
Chennai -600 003.

... Petitioners

versus

1.The Central Administrative Tribunal,
Madras Bench, Represented by its Registrar,
High Court Campus, Chennai-600 001.

2.V.Chandrasekar

3.Appaswamy Subramamani

4.K.V.Ravi Kumar

5.T.N.Sudhiv

6.R.Jayachandran

7.K.S.Balaji Srinivasan

8.P.Sree Kumar

1/11



WP No.30991 of 2007

- 9.P.Kirubanandam
- 10.K.Srinivasan
- 11.V.T.Ramamoorthy
- 12.D.Kamakshi
- 13.J.Ritamary
- 14.M.Jayalakshmi
- 15.G.Parimala
- 16.K.Venu
- 17.L.R.Lakshmanan
- 18.K.Raghavelu
- 19.R.Rathinam
- 20.V.Arunachalam
- 21.M.Sekar
- 22.E.Sukumaran
- 23.R.Panchatcharam
- 24.Milky Rajan
- 25.T.Manjula
- 26.S.Sulochana
- 27.Epsi Ezhil Tamilarasi
- 28.K.Kumar
- 29.R.Chinnaponnu
- 30.M.Sakthivel
- 31.N.Sundaramoorthy
- 32.K.Kesavan
- 33.P.V.Rathinam
- 34.M.Chandran
- 35.K.Paulraj
- 36.K.Dharani
- 37.P.Gangan
- 38.K.Susai
- 39.P.Ettiyappan
- 40.S.Murugesan
- 41.C.Veerabadran
- 42.M.Chokkalingam
- 43.C.Marimuthu



WP No.30991 of 2007

44.M.Nagararjan

45.M.Mani

46.R.Venu

47.K.Periyamunuswamy

48.K.Kuppan

49.R.Vijayakumar

... Respondents

R49 impleaded by DMJ/MSNJ
in MP No.1 of 2009 in WP No.30991 of 2007

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari to call for the records relating to the order date 28.07.2006 in OA No.9 of 2006 insofar as it relates to restraining from recovery of excess payment of HRA & CCA for the period from 01.04.2004 to 13.10.2005 is concerned and quash the same.

For the Petitioners :Mr.P.T.Ramkumar
Standing Counsel

For the Respondents :Mr.P.Mohan Raja
for Mr.P.Rajendran
for respondents 2,3,5 to 15, 18, 19, 21,23,25
to 31, 33 to 48
Mrs.N.R.Jasmine Padme
for respondent 49
R1- Tribunal
No appearance-R4, R16 and R20
Not Ready Notice Reg R17, R22 and R32
R24- Died



WEB COPY



WP No.30991 of 2007

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

The writ petition is filed for the issuance of a writ of Certiorari to call for the records relating to the order dated 28.07.2006 in OA No.9 of 2006 insofar as it relates to restraining the Railway Administration from recovery of excess payment of HRA & CCA for the period from 01.04.2004 to 13.10.2005, and quash the same.

2. Brief facts of the case:

2.1. The respondents herein are employees working in Tiruninravur Railway station, Thiruvallur District. Initially, Tiruninravur was part of the Chennai city limit and the respondents herein were getting HRA and CCA applicable to the Chennai (Grade-A1) since 1978. However, these payments were stopped in June, 2001 and thereafter, HRA and CCA were paid to these respondents at the rate applicable to unclassified area. As the railway administration took the view that the respondents were not eligible for HRA and CCA on par with Chennai city limit, the respondents



WP No.30991 of 2007

had filed an original application in OA No.88 of 2003 before the Central Administrative Tribunal. The Tribunal, by order dated 12.01.2004, had allowed the said application, by taking into account the reply affidavit filed by the petitioner Railway Department, wherein it is stated that on the basis of the protection clause as contained in Railway Board's letter dated 16.10.1997, HRA and CCA will be paid to the respondents, till the re-classification of cities/areas is finalized by the Registrar General and Census Commissioner of India.

2.2. Subsequently, the Registrar General and Census Commissioner reclassified the area and submitted the final report of Census 2001 and the same was circulated by the Railway Board vide their letter dated 28.01.2005. Based on the said final report of Census 2001, the Ministry of Railways, vide communication dated 13.10.2005, addressed to the Southern Railways, had stated that Tiruninravur was excluded from the Chennai city limit and consequently, payment of HRA and CCA allowance applicable to the Chennai limit, to the railways employees at Tiruninravur does not arise w.e.f. 01.04.2004. The petitioner Department vide



WP No.30991 of 2007

Memorandum dated 30.11.2005 has passed an order stating as follows:

"Therefore, it is found necessary to recover the amount paid in excess to you towards House Rent Allowance, It is proposed to recover the excess in 12 (Twelve) easy instalments starting from the Month of November 2005."

Challenging the said order, the respondents have filed original application in OA No.9 of 2006, before the Central Administrative Tribunal. The Tribunal, by order dated 28.07.2006, disposed of the said application by observing that the petitioner Railway Department is not entitled to recover the said excess payment paid to the respondents herein from 01.04.2004 till the issue of the order dated 13.10.2005. The said order passed by the Tribunal is under challenge in the present writ petition.

3. Learned Standing Counsel for the petitioner Department submits that the Central Administrative Tribunal, had allowed OA No.88 of 2003 by taking into account the reply affidavit filed by the petitioner Department, wherein it is stated that on the basis of the protection clause, as contained in Railway Board's letter dated 16.10.1997, HRA and CCA will be paid to the respondents, till the re-classification of cities/areas is



WP No.30991 of 2007

finalized by the Registrar General and Census Commissioner of India.

Subsequently, the final report of Census 2001, was submitted by the Registrar General and Census Commissioner of India and the same was circulated by the Railway Board vide letter dated 28.01.2005. As per the said classification, Tiruninravur was excluded from the Chennai city limit. Hence, payment of HRA and CCA allowance payable to Chennai limit to the railways employees at Tiruninravur does not arise w.e.f. 01.04.2004. The Tribunal, without taking note of the said fact has held that the petitioner Railway Department is not entitled to recover the said excess payment paid to the respondents herein from 01.04.2004 till the issue of the order dated 13.10.2005, as the said payment has been made on par with the city limits.

4. Learned counsel for the respondents supported the order passed by the Tribunal and seeks to dismiss the writ petition.

5. Heard the parties and perused the materials available on record.



WP No.30991 of 2007

6. We have carefully gone into the facts and circumstances of the case. In the light of the judgment of the Hon'ble Supreme Court in the case of State of Punjab & Others vs Rafiq Masih (White Washer) reported in 2014 (4) SCC 334, the petitioner Railway Department does not have any right to recover the said amount from the employees of the Railway Department. The relevant portion of the said judgment is extracted hereinunder:

12. 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



WEB COPY



WP No.30991 of 2007

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.

13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

7. Therefore, the Tribunal has rightly rejected the contention of the petitioner Railway Department. There is no force in the contention of the Railway Department. There is no merit in the writ petition. Hence, the writ petition stands dismissed. There shall be no order as to costs. Consequently, MP No.1 of 2007 is closed.

[D.K.K., J.] [K.B., J.]
08.04.2024

Index : Yes/No
Neutral Citation : Yes/No



WP No.30991 of 2007

mrn

WEB COPY

To
The Central Administrative Tribunal,
Madras Bench, Represented by its Registrar,
High Court Campus, Chennai-600 001.



WEB COPY



WP No.30991 of 2007

D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

(mrn)

WP No.30991 of 2007

08.04.2024