



W.P.No.17066 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.17066 of 2015

Kumarasamy Raja

... Petitioner

Vs.

1.The Chief Engineer (Buildings and Maintenance)
Tamilnadu Highways Department,
Chepauk, Chennai-5

2.The Principal Accountant General,
Thenampet, Chennai-18

3.The Divisional Engineer (Buildings and Maintenance)
Tamilnadu Highways Department,
Chengalpattu Division, Chengalpattu.

4.The Divisional Engineer (Buildings and Maintenance)
Cuddalore Division, Cuddalore.

5.The Sub Divisional Engineer
(Buildings and Maintenance)
Highways Department, Kancheepuram.

6.The Sub Divisional Engineer
(Buildings and Maintenance)
Highways Department, Kancheepuram.

...Respondents



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Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records of the impugned order passed by the 3rd respondent in Notification No.705/2014/A3/dated 19.9.2014 and quash the same as illegal & improper and thereby direct the respondents to issue deducted leave salary to the petitioner.

For Petitioner : M/s.R.K.Kalpana
For Respondents :
(for R1, R3 to R6) : M/s.Alagu Goutham, Govt. Advocate
(for R2) : M/s.V.Murali

ORDER

The petitioner seeks to quash the order passed by the 3rd respondent in Notification No.705/2014/A3/dated 19.09.2014 as illegal and improper and direct the respondents to repay the leave salary of a sum of Rs.1,91,866/- which is deducted by the 4th respondent.

2. The facts have been set out briefly hereinbelow:-



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2.1. The petitioner would submit that he had joined the respondent department on 17.12.1981 through the Employment Exchange as a Road Inspector. He had worked in several divisions and in Thiruvanamalai INP Division his pay scale was changed in keeping with G.O.Ms.No.555 dated 10.06.1985 and G.O.Ms.No.1833 dated 30.07.1985. The petitioner had been appointed in the Thriuvanmalai INP Division as per G.O.Ms.No.856 and as per this Government Order, he should have been promoted to Road Inspector Grade I from Grade II after completion of 5 years. This promotion was granted with the arrears being paid.

2.2. While, the petitioner was working at the Chengalpattu Division and since he has served for over 10 years in Grade I category, on 25.10.2009 his pay scale was fixed at Rs.15,260/-. The petitioner has set out a chart showing the payment that was due to him on 30.06.2013:-



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Pay :	12490
G.P. :	4200
D.A. :	13352
HRA :	1120
M.A :	100
C.A. :	100
Total :	31,362/-

However, he has been paid as follows:-

Pay :	11470
G.P. :	2400
D.A. :	11096
HRA :	880
M.A :	100
C.A. :	100
Total :	26,046/-

2.3. Though the petitioner was working in the Chengalpattu Division under the 3rd respondent, 6 months prior to his retirement the 4th respondent had sent an order to the 3rd respondent correcting and re-fixing the petitioner's salary. The order is without jurisdiction as the petitioner was not working under the 4th respondent and was



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working under the 3rd respondent and it was only the 3rd respondent who could pass the aforesaid order. Not stopping with this, the 4th respondent had also deducted a sum of Rs.1,91,866/- towards leave salary. As a cascading effect the Provident Fund which was deducted from the salary of the petitioner was not taken into account for the period of 6 month and this should also be added to his Provident Fund along with the leave salary.

2.4. On 27.02.2014, the petitioner had sent a representation to the respondents. However, the same has not been considered by the respondents. Therefore, the petitioner had filed W.P.No.10861 of 2014. The said Writ petition was disposed of on 16.04.2014 directing the respondents to dispose of the representation of the petitioner within a period of 4 months from the date of receipt of a copy of this order. After the receipt of the said order, the 3rd respondent had sent the impugned order as a reply to the petitioner. Aggrieved by the same, the petitioner is before this Court.



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3. A counter affidavit has been filed by the 2nd respondent. It is the contention of the 2nd respondent that no recovery proceedings have been initiated by the 2nd respondent and the pensionary benefits of the petitioner have been authorized as per the proposal forwarded by the 3rd respondent taking into account the last drawn pay as Rs.11100 + GP 2600. The 2nd respondent further submitted that the re-fixation of pay, recovery proceedings etc; does not fall within the jurisdiction of the 2nd respondent but under the jurisdiction of 3rd respondent.

4. The 3rd respondents had filed a counter affidavit stating that the petitioner had been sponsored from the Employment Exchange, Sankarapuram and was posted as a Road Inspector to Kalrayan Hills, Hills Road Work, Sub Division II, Kallakurichi. He had joined duty on 17.12.1981 in the office of the Divisional Engineer (Highways) Special Division, Kalrayan Hills Road Works, Kallakurichi. The appointment was under the self sufficiency Scheme and therefore



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since there was no further work he was relieved on 31.01.1986. After 12 years, he was once again reappointed as Road Inspector in the office of Divisional Engineer, Highways, Cuddalore vide his proceedings No.2091/98/A3 dated 15.04.1998. The petitioner had thereafter joined the office of Kurinjipadi Sub Division on 20.04.1998. The petitioner was promoted as Road Inspector Gr.I after completion of 10 years on 04.11.2004 with effect from 05.11.2004 and his pay scale was fixed as Rs.4000-100-6000.

5. The 3rd respondent would submit that some of the employees of the respondent department had filed writ petitions in W.P.Nos.4842 to 4847 of 2012 seeking to be promoted as Road Inspector Grade I with all benefit and arrears after completion of 5 years of service. This Writ Petition was dismissed on 01.02.2013 holding as follows:

“In fact this court is surprised to note that promotion is granted on just completion of 5 years of service. Since the same is possible only in case of a scheme providing time bound promotion ie. if the



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scheme given benefit of promotion to higher post on completion of a stipulated period of service then the employee is entitled to promotion under this scheme, but contrary to the service jurisprudence the Divisional Engineers, all over Tamilnadu, for the reasons best known to them Granted promotion to the road Inspector Gr.II just on completion of five years service as Road Inspector Gr.I. But in the concerned Department, Rules do not provide any time bound promotion, however the Divisional Engineers of the above said Regions, of Tamilnadu High ways Dept. has granted promotion to Road Inspector, Gr.II, as Road Inspector. Gr.I on completion of just 5 years of service with all monetary service."

6. In the above order, this Court had also directed the Secretary Highways Department, Chennai to enquire into this illegality and submit a report to the Chief Secretary to take further action.



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7. The petitioner in pursuance of the above order had given a consent letter on 29.05.2013 to the Divisional Engineer, Highways, Cuddalore stating that he had received an excess amount of Rs.1,68,584/- which he was willing to reimburse. After giving this consent letter he had retired from service on 30.06.2013.

8. Since the petitioner had totally received an excess amount of Rs.1,79,089/-, the same was recovered from his surrender of earned leave salary. Therefore, in view of above consent letter given by the petitioner, the above writ petition is not maintainable. However, the said consent letter has not been filed into the Court.

9. Heard the counsels on either side.

10. Admittedly, when the petitioner had superannuated, the 3rd respondent had issued a no objection certificate stating that no charges/recoveries was due.



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11. Be that as it may, the impugned order passed by the 3rd respondent is against the dicta laid down by the Hon'ble Supreme Court in the judgement reported in ***(2015) 4 SCC 334 – State of Punjab and others Vs. Rafiz Masih (White Washer) and Others***, wherein the Hon'ble Supreme Court in Paragraph No.18 has stated 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).



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(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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12. Therefore, in the light of the above judgement, the Writ Petition is allowed. The impugned order passed by the 3rd respondent dated 19.09.2014 is quashed. The respondents are directed to pay the deducted leave salary to the petitioner. No costs.

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(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No



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