



W.P.No.30093 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.30093 of 2017
and WMP.No.32668 of 2017

N. Paneerselvam

... Petitioner

Vs.

1. The Chief Engineer
Highways and Road Works Department
Chepauk, Chennai 600 005.
2. The Director General
Highways and Road Works Department
Chepauk, Chennai 600 005.
3. The Divisional Engineer (Highways)
Construction & Maintenance
Vellore – 9.
4. The Accounts Officer,
Office of the Accountant General (A & E)
361, Anna Salai, Chennai 600 018.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India,
to issue Writ of Certiorarified Mandamus to call for the records relating to the



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proceedings of the third respondent made in Se.Mu.order No.155/2017/A3 dated 03.10.2017 to quash the same and to consequently direct the respondents to forthwith revise and refix the pension and other pensionary benefits as applicable on the basis of the promotion already accorded.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.P.Ganesan
Additional Govt.Pleader for R1 & R2
Mr.V.Murali for R4

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the third respondent made in Se.Mu.order No.155/2017/A3 dated 03.10.2017 to quash the same and to consequently direct the respondents to forthwith revise and refix the pension and other pensionary benefits as applicable on the basis of the promotion already accorded.

2. It is not disputed that the petitioner had already been retired from service on attaining the age of superannuation on 29.02.2016 and the impugned



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proceedings came to be issued on 03.10.2017 that is after a lapse of more than 1 ½ years. The alleged excess payments of Rs.3,75,148 made since 01.10.2007 was directed to be recovered from the petitioner at the rate of Rs.6,000/- p.m. from the monthly pension in 62 instalments and Rs.3,148/- as the last instalment. Aggrieved by the said order dated 03.10.2017 the present writ petition has been filed.

3. The learned counsel for the petitioner relying on the judgment of the Hon'ble Supreme Court of India, reported in (2015) 4 Supreme Court Cases 334 (*State of Punjab and others vs. Rafiq Masih (White Washer) and others*), submitted that recovery cannot be made, as the pay was wrongly fixed by the department without any fault of the petitioner. The learned counsel therefore prayed to set aside the impugned order.

4. The learned counsel for the respondent on the other hand submitted that the impugned order is unassailable.

5. Heard both sides and perused the materials available on record.



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6. The issue of recovery was considered by the Hon'ble Apex Court in the judgment reported in 2015 (4) SCC 334 (*State of Punjab and others vs. Rafiq Masih (White Washer) and others*). After considering various judgments on the issue, in para-18, the Hon'ble Apex Court 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 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 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*



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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.”

The situations (ii) and (iii) mentioned in para-18 of the judgment referred to above are applicable to the facts and circumstances of the present case in as much as the excess pay paid for the period from 01.10.2007 was sought to be recovered after the petitioner retired from service on 29.02.2016.

7. In view of the above facts, the impugned order of the 3rd respondent dated 03.10.2017 is liable to be set aside and the same is hereby set aside. In the result, the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

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Index : Yes /No

Speaking Order : Yes/No



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MUMMINENI SUDHEER KUMAR, J.

dpq

To

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