



W.P.(MD) No.21720 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2023

CORAM:

THE HONOURABLE Mr.JUSTICE BATTU DEVANAND

W.P.(MD) No.21720 of 2016

and

W.M.P.(MD) No.15532 of 2016

J.Punitha Rani

.. Petitioner

Vs.

1.The Secretary to Government,
Finance (Pension) Department,
Secretariat, Chennai.

2.The Treasury Officer,
District Treasury Office,
Tuticorin.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order of the second respondent herein in Na.Ka.No.9284/J2/2016, dated 21.10.2016 and quash the same.

For Petitioner : Mr.G.Mohankumar

For Respondents : Mr.A.Kannan
Additional Government Pleader



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ORDER

Challenging the order of recovery passed by the second respondent on 21.10.2016, this writ petition has been filed.

2. The facts of the case are that the petitioner's mother was working as a Secondary Grade Teacher and she died on 14.04.1998, while she was in service. The petitioner is the widowed daughter of her deceased mother. On 28.11.2011, the Respondent No.1 issued G.O.Ms.No.325, extending family pension to the widowed daughters of the Government Servants, even though they have completed the age of 25 years and no minimum family pension was fixed in the said Government Order.

3. The petitioner would submit that the Accountant General office has fixed the family pension to the petitioner at Rs.4,543/- with effect from 23.04.2012 by an order dated 17.08.2012. Hence, from 23.04.2012, she has been receiving family pension at the rate of Rs.4,543/-. She submits that on 31.01.2013, the Respondent No.1 issued G.O.(Ms) No.



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29, fixing the minimum family pension at the rate of Rs.3,050/- with dearness allowance of Rs.100/-. Therefore, from May, 2016 onwards, the petitioner is receiving family pension at the rate of Rs.3,050/- per month. On 21.10.2016, the Respondent No.2 issued the impugned order stating that the family pension was wrongly fixed at Rs.4,543/- and hence, an excess amount of Rs.1,42,721/- has been paid towards family pension to the petitioner from 23.04.2012. The impugned order further directed the petitioner to remit the entire alleged excess amount of Rs.1,42,721/- before the Respondent No.2, otherwise the said excess amount would be recovered from the family pension of the petitioner from the month of November, 2016 onwards. Challenging the said recovery order, this writ petition is filed.

4. The learned counsel appearing for the petitioner would submit that the issue involved in this writ petition is no longer *res integra* and it has been decided by this Court in W.P.(MD).No.669 of 2018 and this Court, by order dated 19.11.2021, disposed of the Writ Petition on the ground of violation of principles of natural justice. Hence, the impugned order is liable to be set aside.



5. The learned Additional Government Pleader appearing for the respondents did not dispute the facts submitted by the learned counsel for the petitioner.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

7. A similar issue was raised before this Court in W.P.(MD).No.669 of 2018 and a learned Single Judge of this Court, by order dated 19.11.2021, has held as follows:

“47. For a decision on whether the re-fixation is proper, the 2010, 2012 and 2015 proceedings are to be reconciled. A copy of audit objection has not been placed on file. However, proceedings dated 21.05.2015 refers to the objection to the effect that some certain posts classified under the category 'other trade posts' (unskilled) in the annexure to the 2012 letter cannot be considered as technical posts as they do not involve technical skill and therefore, higher category of pay cannot be granted to such categories.

48. While exercise of determining the appropriate categorization of posts is entirely within the domain of



the State, such categorization must be seen to be based on proper and appreciable differentia. A comparison of the categorization of 'other trade posts' in proceedings dated 01.10.2012 and Annexure-B of proceedings dated 21.05.2015 would show that not all the posts differentiated as 'other trade posts' have been denied the effect of the pay enhancement.

49. Sixty nine (69) trade posts are covered in proceedings dated 01.10.2012 and 36 stand excluded in 2015. Upon a comparison of the two lists, I find that among those retained in the technical trade posts in the category of 'cleaners' are fountain cleaner, motor cleaner, pipe line cleaner, pump cleaner, pump house cleaner, reservoir cleaner, and filter beed cleaner, whereas tank cleaner, drain cleaner, silt pucket cleaner and lorry cleaner have been excluded.

50. Then again while tank watchman, park watchman, head works watchman, reservoir watchman, spring watchman, water supply watchman, thoppu watchman, market watchman, bus stand watchman, boarding & lodging watchman, weekly market watchman, kalyana mandapa watchman and TB watchman stand excluded, borewell watchman and pump house watchman continue to have the benefit of increased pay.



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51.I am thus, at a loss to understand the basis of differentiation within the two categories as above. To my mind, the exercise has been done mechanically simply following the audit objection and this is arbitrary. The respondents must apply their minds in a proper, scientific manner in the categorization of posts as 'skilled' and 'unskilled' prior to arriving at a decision in regard to the exclusions. Let this exercise be done forthwith, bearing in mind the duties and functions performed by all categories of employees in category 5 of proceedings issued in 2012. Impugned order dated 30.10.2017, not being based upon proper categorization of the trade/non-trade posts is set aside qua the aspect of re-fixation of pay."

8. By following the aforesaid order, another learned Single Judge has passed an order dated 02.06.2023 in W.P.(MD) No.12819 of 2016.

9. On the other hand, the learned Additional Government Pleader for the respondents placed a copy of the common order, dated 08.08.2017 passed by this Court in W.P.No.15937 of 2017 and batch.

10. On a careful perusal of the above order dated 08.08.2017, it



appears that the said order is also in favour of the petitioners. While allowing the said Writ Petitions, this Court followed the legal principle in this regard as settled by the Hon'ble Supreme Court of India in the case of ***State of Punjab v. Rafiq Masih*** reported in ***(2015) 4 SCC 334***. It is relevant to extract paragraph No.18 of the judgment stated *supra* as herein under:

"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 hereinabove, 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 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.



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(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 in 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."

11. In the light of the orders passed by this Court as stated *supra*, applying the ratio laid down in those orders, this Writ Petition is allowed with the same terms.

12. No costs.

13. Consequently, the connected miscellaneous petition is closed.

14.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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To

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Secretariat, Chennai.
- 2.The Treasury Officer,
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Tuticorin.



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BATTU DEVANAND, J.

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