

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.Nos.12517 and 12518 of 2007

1.G.Krishnamoorthy
2.M.Marimuthu
3.E.Jaganathan
4.S.Rukmangathan
5.V.Gopal
6.E.Amirthalingam
7.P.Sampath
8.P.Babu
9.V.Rajendran
10.S.Dayalan
11.S.Muthusamy
12.A.Elumalai
13.R.Elumalai
14.N.Kanniyappan
15.M.Gengan
16.L.deenan
17.P.Ramalingam
18.G.Krishnan
19.D.Prabakaran
20.G.Perumal
21.B.Arulmozhi
22.P.Kothandaraman

Petitioners-WP.12517/2007

1.S.Arokkiyasamy
2.N.K.Nagarajan
3.C.Ammavasai
4.P.Selvaraj
5.B.Selvaraj
6.M.Muthuraman
7.C.Kasi
WP.12518/2007

Petitioners-

Vs

1.The Director of Horticulture
Chepauk, Chennai-5
21518/07

R1 in both WP.12517 &

2.The Assistant Director of Horticulture
Devakottai

R2 in WP.No.12518/07

Prayer:- These Writ Petitions came to be filed under Article 226 of the Constitution of India, by transfer of OA.Nos.696 and 697 of 2003 from the file of the Tamil Nadu Administrative Tribunal, to

issue a Writ of Certiorari to call for the records in Letter No.Th.1/28061/2002, dated 4.12.2002 of the 1st Respondent and to quash the same and the records of the 1st Respondent in Letter No.Th.1/28061/2002, dated 4.12.2002 and the consequential order passed by the 2nd Respondent in proceedings No.A1075/2002, dated 7.1.2003 and to quash the same and to direct the Respondents to repay the recovered amount if any, respectively.

For Petitioners : Mr.Anand

For Respondents : Mr.A.Kumar, SGP

ORDER

In these Writ Petitions, the Petitioners seek to quash the order of the 1st Respondent dated 4.12.2002 and the consequential order passed by the 2nd Respondent, dated 7.1.2003 and to direct the Respondents to repay the recovered amount.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. According to the Petitioners, they were originally appointed as Field Demonstration Officers in the Agriculture Department through the employment exchange and subsequently, they were promoted as Assistant Agricultural Officers. Due to audit objection, they were denied 5% personal pay and by the impugned order, the same was sought to be recovered from them. Hence, the Petitioners are before this court.

4. It is brought to the notice of this court by the learned counsel for the Petitioners that even at the time when they joined in the year 1998, there was a clarification issued by the Department in letter dated 28.9.1998, wherein it has been categorically stated that all those employees on 1.9.1998 belonging to the categories which were allowed personal pay as per the GO.Ms.664 dated 24.8.1992 are eligible for the 5% personal pay irrespective of whether such individual employee earlier availed the personal pay benefit or not and therefore, they cannot be denied of such benefit. It is also brought to the notice of this court that pending the above OAs, further clarification was also issued by the Government in Letter dated 19.9.2003, wherein also it has been clarified that all those persons, who were appointed on 1.9.1998 and have been promoted on or before 1.9.1998, are also entitled for 5% personal pay. However, it is submitted by the learned counsel for the Petitioner that even though there was no order of stay granted in these Writ Petitions, the deduction has not been done from their salary so far and some of them have already been retired and therefore, alleged deduction cannot be made.

5. It is the contention of the learned Additional Government Pleader for the Respondents that the Petitioners are not working in the capacity of the Assistant Agricultural Officers and

hence, they are not eligible for 5% personal Pay.

6. The said contention of the learned Additional Government Pleader cannot be accepted, inasmuch as it has been clarified in the affidavit that the Petitioners were originally appointed and promoted prior to 1.9.1998. In view of the subsequent developments and the subsequent clarification letters dated 24.8.1992 and 19.9.2003 and some of them had already retired and further the deduction having not been deducted so far, the impugned order cannot be implemented as against the Petitioners.

7. In view of the above said reasons and the clarification letters, these Writ Petitions are allowed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To:

- 1.The Director of Horticulture, Chepauk, Chennai-5
 - 2.The Assistant Director of Horticulture, Devakottai
- +1 cc to Mr.Anand, Advocate,SR.34505
+1 cc to Govt.Pleader,SR.34890.

lrs(co)
krd 20/7

WP.Nos.12517 and 12518 of 2007

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