

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.1475/2017 & WMP.Nos.1387 & 1388/2017

R.Gajendran

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Petitioner

Vs

1.The Agricultural Production Commissioner
and Secretary to Government,
Government of Tamil Nadu,
Agriculture [OS] Department, Secretariat
Chennai 600 009.

2.The Commissioner of Agriculture
Agricultural Extension Wing,
Chepauk, Chennai 600 005.

3.The Production Officer
Agricultural Extension Wing
O/o.Commissioner of Agriculture
Chepauk, Chennai 600 005.

4.The Accountant General [A&E]
Tamil Nadu, Chennai 600018.

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Respondents

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 relating to the orders in [1] Government Letter No.29112/OS/2014-8 Agriculture [OS] Department dated 16.09.2015 of the 1st respondent and [2] Pro.Na.Ka.No.Ve.VIP 48400/A2/2016 dated 01.09.2016 of the 2nd respondent and quash the same and to issue consequential directions to the respondents to restore the selection grade of the petitioner as Assistant from 01.03.2006 and desist from recovering any amount from his DCRG and further direct the respondents to grant forthwith all retirement and pensionary benefits to the petitioner and disburse all arrears with interest within a time frame.

For Petitioner : Mr.M.Ravi

For RR 1 to 3 : Mr.P.Sanjay Gandhi, AGP

For R4 : Mr.V.Vijayshankar

ORDER

By consent, the writ petition is taken up for final disposal. Mr.P.Sanjay Gandhi, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 3 and Mr.V.Vijayshankar, learned Standing Counsel accepts notice on behalf of the 4th respondent.

2 The petitioner would state he joined the service as a Driver in the Tamil Nadu Cooperative Oil Seeds Growers Federation [TANCOF] on 18.12.1983 and served in that capacity till 20.1.1990 and later on, appointed as Junior Assistant on 21.11.1990 and subsequently, as a Marketing Inspector from 01.03.1996. The petitioner would further state that he was later on absorbed in the Agricultural Extension Wing of the Department of Agriculture from 01.04.2002 as per G.O.Ms.No.97, Agriculture Department, dated 21.04.2008 and retired from service on attaining the age of superannuation on 30.06.2016. It is further averred by the petitioner that while he was working in TANCOF, he was granted selection grade scale of pay in the post of Assistant with effect from 01.03.2006 and he was drawing the said pay scale till the date of his retirement on 30.06.2016. However, to the shock and surprise of the petitioner, he was issued with the impugned proceedings by the 2nd respondent cancelling his selection grade of pay and according to the petitioner, he has not been afforded with any opportunity, whatsoever, before passing the impugned order of refixation and recovery and therefore, challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 Mr.M.Ravi, learned counsel for the petitioner has drawn the attention of this Court to the impugned order and would submit that admittedly, no notice whatsoever has been issued to the petitioner before ordering refixation and the consequential order of recovery and the said impugned order has been passed based on the Letter dated 16.09.2015 issued by the 1st respondent and since the impugned order is per se in violation of the principles of natural justice, prays for quashment of the same and would further contend that since the petitioner belongs to Class-III category, in the light of the judgment rendered by the Hon'ble Supreme Court in State of Punjab and others V. Rafiq Masih reported in 2015 [4] SCC 334, and prays for appropriate orders.

4 Per contra, Mr.P.Sanjay Gandhi, learned Additional Government Pleader would contend that based on the letter of the 1st respondent dated 16.09.2015, the impugned order of refixation and recovery has been passed and whatever the benefit accrued in favour of the petitioner is an unjust enrichment and as such, it is open to the respondents to recover the same and prays for dismissal of this writ

petition.

5 This Court paid its best attention to the rival submissions and also perused the typed set of papers.

6 The subject matters of challenge in this writ petition are the letter dated 16.09.2015 on the file of the 1st respondent as well as the consequential order of refixation and recovery passed by the 2nd respondent dated 01.09.2016.

7 A perusal of the impugned order of the 2nd respondent dated 01.09.2016 would clearly disclose that before ordering refixation and the consequential recovery, the petitioner has not been put on notice. It is a well settled position of law that orders of refixation and the consequential recovery, visits the concerned individual with grave civil consequences and in all fairness, the 2nd respondent ought to have put the petitioner on notice before passing the impugned order and however, he has failed to do so.

8 The impugned order dated 01.09.2016 passed by the 2nd respondent contains details of calculation and therefore, this Court is of the view that it should be treated as a show cause notice and it is open to the petitioner to submit his response/explanation to the respondents 1 and 2, within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondents 1 and 2 shall consider the said explanation / response on merits and in accordance with law and pass orders within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner and till such time, the respondents 1 and 2 shall defer decision as to the refixation and recovery.

9 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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and Secretary to Government,
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Chennai 600 009.

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4.The Accountant General [A&E]
Tamil Nadu, Chennai 600018.

+1cc to M/s.Ravi, Advocate sr.4150

+1cc to Government Pleader sr.4298

rp(co)
ss(6/2/2017)

W.P.No.1475/2017



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