



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.12104 of 2017
and
M.P(MD)No.9348 of 2017

C.Jacob

... Petitioner

Vs.

1. The District Judge,
Sivagangai District.

2. The Sub-Judge,
Sub-Court, Devakottai,
Sivagangai District.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent, dated 09.02.2012 and confirmed by the impugned order of the first respondent, dated 11.04.2017, quash the same and direct the respondents to refund the recovered amount with interest and further direct the respondents to restore/continue the petitioner's Grade Pay for Selection Grade Junior Assistant as Rs.4,200/- .

For Petitioner : Mr.R.V.Rajkumar

For Respondents : Mr.D.Sivaraman

ORDER

**(Order of the Court was made by
V.BHAVANI SUBBAROYAN,J.)**

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent, dated 09.02.2012 and confirmed by the impugned order of the first respondent, dated 11.04.2017 and quash the same and direct the respondents to refund the recovered amount with interest and further direct the respondents to restore/continue the petitioner's Grade Pay for

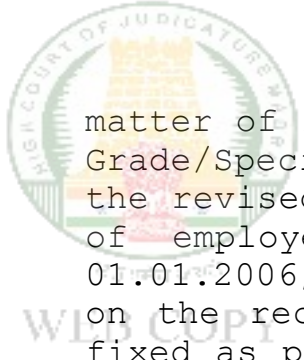
Selection Grade Junior Assistant as Rs.4,200/-.

2.The petitioner had joined duty as a Reader on 16.04.1993 and the pay scale for that category was Rs.975-1660 and later on, he was promoted as Junior Assistant on 13.08.1997, wherein, pay scale was also same. However, after Sixth Pay Commission, the pay scale for Junior Assistant was revised as Rs.3200-85-4900 and the petitioner received the same till April, 2003. The petitioner having completed 10 years, was awarded Selection Grade Junior Assistant on 26.04.2003 and his scale was fixed as Rs.4000-100-6000 as per the Tamil Nadu Revised Pay Scale Rules, 1998 and the petitioner started receiving the same as per the revision. Thereafter, G.O.Ms.No.234, dated 01.06.2009, the Tamil Nadu Revised Pay Scale Rules, 2009 was introduced with effect from 01.01.2006 notionally and with monetary benefits from 01.01.2007. As per the said Rule, the pay scale for Junior Assistant was re-fixed as Rs.5,200-20,200 + 2000 Grade Pay and for Selection Grade Junior Assistant, it was Rs.5200-20200 + 2400 Grade Pay. Thereafter, the Government by way of issuing G.O.Ms.No.45, dated 10.02.2011 fixed the pay scale for Junior Assistant as Rs.5200-20200 + 2400 Grade Pay, by increasing the Grade Pay from Rs.2000/- to Rs.2400/-.

3.The petitioner further submitted that the Government has issued an another order, before 10.02.2011, ie., 08.11.2010 re-fixing the pay of Selection Grade as Rs.9300-34800 + 4200 Grade Pay for those employees whose pay scale was Rs.5200-20200 + 2400 Grade Pay, which was increased from Rs.2,400 to Rs.4,200. However, the increase of the revision of pay for Selection Grade was applicable only to those employees who were awarded Selection Grade prior to 01.01.2006. The petitioner was awarded Selection Grade Junior Assistant on 26.04.2003 and the petitioner was entitled for a Grade Pay of Rs.4,200/- and he received the same from 01.08.2010 onwards.

4.When that being so, the second respondent by his proceedings, dated 09.02.2012 held that the petitioner is entitled only Rs.2,400 as Grade Pay and not as Rs.4,200/- and re-fixed his Grade Pay as Rs.2,400/- and also ordered for recovery of Rs.50,786/- paid as excess salary. Against which, the petitioner approached the first respondent by giving a written request on 28.06.2016 and the first respondent by his proceedings, dated 11.04.2017 rejected the petitioner's claim stating that following G.O.Ms.No.237, Finance (Pay) Department, dated 22.07.2013, the petitioner was not entitled for Rs.4,200/- as Grade Pay. Against the order, which is impugned herein, the petitioner has preferred the present Writ Petition.

5.The first respondent filed a counter-affidavit stating that the Government by letter No.63305/Pay Cell/2006 - Finance (PC) Department, dated 08.11.2010 issued certain instructions in the



matter of fixation of pay of employees, who were awarded Selection Grade/Special Grade prior to 01.01.2006. As per the said letter, the revised Selection Grade/Special Grade scale of pay in the case of employees awarded Selection Grade/Special Grade prior to 01.01.2006, the ordinary Grade scales of pay to be revised based on the recommendations of 'One Man Commission' and pay shall be fixed as per the Scales of pay, as indicated in the Annexure - I. The first respondent in the counter-affidavit would further state that the first level promotional post to the Junior Assistant is Assistant. The Grade Pay of the post of the Assistant is Rs.2,800/-. Hence, the petitioner is a Junior Assistant (Selection Grade) as on 26.04.2003 ie., prior to 01.01.2006. The Grade pay is to be restricted to the first level promotional post and he is entitled to the Grade Pay of Rs.2,800/- as per para 4(i) of the Government Letter No.63305/Pay Cell/2006-Finance (PC) Department, dated 08.12.2005. Hence, the petitioner is not entitled to receive Grade Pay of Rs.4,200/- and he is entitled to receive Grade Pay of Rs.2,800/- in the post of Junior Assistant (Selection Grade) with effect from 26.04.2003 and sought for dismissal of the Writ Petition.

6.It is not in dispute that the petitioner was awarded Selection Grade as on 26.04.2003 and the scale of pay was revised to Rs.4000-100-6000 as per the Tamil Nadu Revised Pay Scale Rules, 1998, the pay for Selection Grade Junior Assistant is as above. However, the Government while issuing G.O.Ms.No.234, dated 01.06.2009, the Tamil Nadu Revised Pay Scale Rules, 2009 was introduced with effect from 01.01.2006 notionally and with monetary benefits from 01.01.2007. As per the said Rules, the pay scale for Junior Assistant was re-fixed as Rs.5200-20200 with Grade Pay of Rs.2400/-. Further, the Government by letter, dated 08.11.2010, re-fixed the pay of Selection Grade as Rs.9300-34800 + 4200 Grade Pay, for those employees whose pay scale was fixed at Rs.5200-20200 + 2400 Grade Pay ie., by Government letter, dated 08.11.2010 and increased the Grade Pay from Rs.2,400/- to Rs.4,200/-.

7.It could be seen from the above letter, dated 08.11.2010, in paragraph No.4 and the same reads as follows:-

"4.The above issue has been examined by the Government in detail in the light of the orders issued in para-4 of Government Order second cited and the consequential revision made to the various categories in the ordinary Grade Scales of pay based on the One Man Commission recommendations and subsequent Government Orders. Accordingly, I am directed to issue the following guidelines for fixation of pay in the revised Selection

Grade/Special Grade posts:-

(i) The revised Selection Grade/Special Grade scales

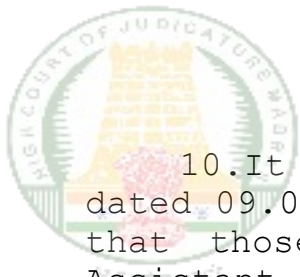


of pay in the case of employees awarded Selection Grade/Special Grade prior to 01.01.2006 and in whose cases the ordinary Grade Scales of pay have been revised based on the recommendations of One Man Commission/further order of Government thereon shall be fixed as per the scales of pay indicated in the Annexure - I to this letter following the same methodology of fixation of pay in the Selection Grade/Special Grade scales of pay of employees as was done in pre-2006 scales of pay as indicated in Appendix - II of G.O.Ms.No.162, Finance (PC) Department, dated 13.04.1998 subject to the same condition stipulated therein that if the revised Selection Grade/Special Grade scales of pay indicated in the Annexure - I happens to be higher than the first level/second level promotion posts, then in such cases, only the revised Selection Grade/Special Grade scales of pay should be restricted to the level of their first level and second level promotional posts respectively.

(ii) The above revised Selection Grade/special Grade scales of pay indicated in the Annexure - I to this letter shall be confined only to the employees who were awarded Selection Grade/Special Grade prior to 01.01.2006 and in the case of employees who have exercised their option to come over to the revised scales of pay on the date of their award of Selection Grade/Special Grade between 01.01.2006 and 31.05.2009 (prior to the issue of the G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009)."

8. On a plain reading of the above stated instructions, it is clear that the Government has intended to increase the Grade Pay of those employees, who were awarded Selection Grade pay prior to 01.01.2006. As per the admitted fact, the petitioner was awarded Selection Grade on 26.04.2003, as such, following G.O.Ms.No.234, dated 01.06.2009, the Tamil Nadu Revised Pay Scale Rules, 2009, came into effect from 01.01.2006 notionally and with monetary benefits from 01.01.2007 and the pay scale for Junior Assistant was re-fixed as Rs.5200-20200 + 2400 Grade Pay and thereafter, the Government in letter, dated 08.11.2010 categorically cleared that the re-fixing of pay for Selection Grade was Rs.9300-34800 + 4200 Grade Pay, whereby, there was an increase in the Grade Pay from Rs.2400/- to Rs.4200/- to all those employees, who were awarded Selection Grade prior to 2006 in the post of Selection Grade Junior Assistant.

9. The petitioner herein was awarded Selection Grade Junior Assistant on 26.04.2003 and the petitioner is entitled to receive Rs.2400/- as Grade Pay and not as Rs.4200/- Grade Pay, as per the order of the Government. The second respondent, dated 09.02.2012, which was later on confirmed by the first respondent by his proceedings, dated 11.04.2017.



10. It is seen that both the respondents while passing orders, dated 09.02.2012 and 11.04.2017 respectively, failed to appreciate that those employees who were awarded Selection Grade Junior Assistant prior to 01.01.2006, are entitled to receive a pay of Selection Grade as 9300-34800 + 4200 Grade Pay. Both the respondents had interpreted the Government letter, dated 08.11.2010, whereby the Government had categorically re-fixed the pay of Selection Grade as Rs.9300-34800 + 4200 Grade Pay.

11. The Honourable Supreme Court in the case of **State of Punjab and others and Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC 344**, wherein, it has been categorically held that action of State in ordering recovery from an employee would be an order sustainable, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, wrongful, improper and more unwarranted when the corresponding right of the employer to recover the amount as recovered, would be having a harsh and arbitrary effect on the employees. While deciding the above case, the Honourable Supreme Court has categorised wherein the recoveries by the employees would be impermissible in law and in paragraph No.18 it has been 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

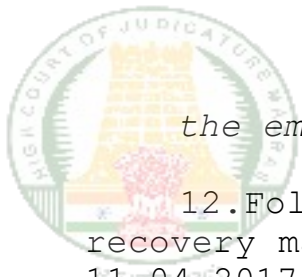
(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D Service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order 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 used.

(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."

12. Following the aforesaid principles, we hold that the recovery made on 09.02.2012 confirmed by the impugned order, dated 11.04.2017 is bad in law and thereby set aside.

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13. Thus, the Writ Petition is allowed, setting aside the impugned orders, dated 09.02.2012 and 11.04.2017 and directed the respondents to refund the recovered amount to the petitioner within a period of four weeks from the date of receipt of a copy of this order and further, the respondents are directed to restore the petitioner's Grade Pay for Selection Grade Junior Assistant at Rs.4200/- in consonance with the Government letter No.63305/Pay Cell/2006-Finance (PC) Department, dated 08.11.2010. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Judge,
Sivagangai District.
2. The Subordinate Judge,
Devakottai,
Sivagangai District.

+ 1 cc TO Mr.D.Sivaraman , Advocate in SR No. 93921
+ 1 cc TO Mr.R.V.Rajkumar , Advocate in SR No. 94448

Ps

AE/SV MMS/SAR2/08.01.2018/6P/5C

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20.12.2017