

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.A.No.1230 of 2018 and CMP.No.10098/2018

1. The State of Tamil Nadu
rep. by its Secretary,
Home Department (Police 18),
Fort St. George,
Chennai-9.
 2. The Director i/c.,
Forensic Sciences Department,
30-A, Kamarajar Salai,
Mylapore, Chennai-4. Appellants/Respondents
- Vs
1. Dr.P.Kirubakaran ...1st Respondent/Petitioner
 2. The Principal Accountant General (A&E),
Pension 4 Section,
361, Anna Salai, Teynampet,
Chennai-18. 2nd Respondent/3rd Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 14.07.2016 made in W.P.No.32235 of 2013 by a learned Single Judge.

W.P.No.12751 of 2013:

Presented to this Court under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd Respondent made in the proceedings A5/40494/13-7 and A5/40494/13-8 dt.22.10.2013 quash the same and consequently direct the Respondent to extend all the benefits of pay fixation and other benefits pursuant to the proceedings in Na.Ka.No.A4/1613/98 dated 21.10.98 for all purpose including pension and pensionary benefits.

For Appellants :: Mr.P.S.Siva Shanmuga Sundaram,
Special Government Pleader
For Respondents:: ...

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the Common Order dated 14.07.2016 made in W.P.No.32235/2013 along with other Writ Petitions by a learned Single Judge.

2. The Writ Petition has been filed challenging the impugned order of the 2nd respondent dated 22.10.2013 along with other writ petitions and to quash the same. The said Writ Petition was allowed by the learned Single Judge by a Common Order dated 14.07.2016. Aggrieved over the same, the State is before this Court with this Writ Appeal.

3. The matter is listed today under the caption, ''for admission''. Heard the learned Special Government Pleader appearing for the appellants. We have also gone through the typed set of papers filed along with the writ appeal including the order passed by the learned Single Judge.

4. A perusal of the typed set of papers filed along with the Writ Appeal reveals that the writ petitioner/1st respondent joined the Government Service as Scientific Assistant Grade II, Forensic Sciences Department on 20.05.1982, subsequently, he was promoted as Scientific Assistant Grade I on 4.8.1984 and thereafter, reverted as Scientific Assistant Grade II on 10.5.1985 and once again, he was promoted as Scientific Assistant Grade I on 31.01.1986 and thereafter reverted as Scientific Assistant Grade II on 7.7.1986. He was again promoted as Scientific Assistant Grade I and reverted as Scientific Assistant Grade II on 15.7.1991 and subsequently, he was promoted as Scientific Assistant Grade I on 4.9.1992 and continued to serve in the said post till he was promoted as Scientific Officer on 30.8.2000. His services in the post of Scientific Assistant Grade I was initially regularised w.e.f. 4.2.1986 and consequently, he was moved to selection grade in the cadre of Scientific Assistant Grade I on 4.2.1986 F.N. and his Selection Grade Pay was revised w.e.f. 04.02.1996 vide Proceedings dated 9.11.1998.

5. It is further seen that during the year 1999, some of the Scientific Assistants Grade I, aggrieved by the revised Seniority List issued by the then Director of Forensic Science Department dated 23.6.1995 filed O.A.No.443/1999 before the Tamil Nadu Administrative Tribunal to quash the said revised Seniority List and accordingly, the Tribunal in its Common Order dated 09.12.2003 quashed the revised Seniority List dated 23.6.1995 and directed the respondents therein, namely, the Secretary to the Government, Home Department and the Director of Forensic Sciences Department to revise the seniority of

Scientific staff based on the date of promotion/joining in the post of Scientific Assistant Grade I. Aggrieved over the said orders, some individuals filed W.P.No.12751/2004 etc. before this Court and obtained stay on the operation of the said order dated 9.12.2003. But as per the direction of the Tribunal, another seniority list was prepared during 2006 in which the services of the writ petitioner in the post of Scientific Assistant Grade I was regularised w.e.f. 30.8.1990 among others and in the said revised seniority list, it has been mentioned that the same is subject to the outcome of the pending writ petitions. Subsequently, the W.P.No.12751/2004 etc. batch was dismissed by the Division Bench of this Court by common order dated 28.1.2009 thereby upholding the order of the Tribunal. However, the Tribunal declined to interfere with the revised Seniority List. In the meantime, on account of the audit objection of the Accountant General dated 9.9.2008 that the regularisation of the services of 14 Scientific Staff including the writ petitioner herein in the Grade of Scientific Assistant Grade I is much before their initial date of promotion as Scientific Assistant Grade I and the same is not in order, recovery should be made. Aggrieved over the same, the writ petitioner/1st respondent has preferred a Writ Petition before this Court which was allowed by the learned Single Judge of this Court by order dated 14.07.2016.

6. While allowing the said writ petition along with other writ petitions, the learned Single Judge referred to a Division Bench judgment of the Apex Court reported in 2015 (2) Supreme Court Cases 151 in State of Punjab and others etc. vs. Rafiq Masih (White Washer case) wherein, the Apex Court has categorically stated that no recovery could be made without notice. Even if payments have been mistakenly made by the employer to the employee, in excess of their entitlement, that cannot be recovered. The learned Single Judge has further held that in the cases on hand, out of 14 aggrieved Scientific Staffs, only 8 persons have come to court out of whom 4 persons have already retired and two more persons are to retire in October, 2016. For the excess payment made earlier, the recovery was sought to be made by the Proceedings in 2013. The learned Single Judge has also stated that as per G.O.Ms.No.773, Finance (F.R.I) dated 13.8.1975 the excess pay drawn due to the initial fixation under Fundamental Rule 22-B on temporary promotion/appointment shall not be recovered in such cases or in cases where he is reverted to the lower post subsequently or if the person ceased to hold the higher post due to retirement or for any other reason.

7. In this regard, it is relevant to extract paragraphs 7 to 10 of the said order here under:

''7. On a perusal of the impugned orders, it is seen that the impugned orders unilaterally say that on audit objection, it is found out that the revision of the selection grade was made wrongly and therefore, they re-fixed the pay of the selection grade and consequentially, all those benefits, which were given to the petitioners during the relevant years were sought to be recovered from the petitioners, without notice, which under law is not permissible.

8. Further, as rightly pointed out by the learned counsel for the petitioners, in G.O.Ms.No.773, Finance F.R.I, dated 13.08.1975, it is specifically stated that the excess pay drawn due to the initial fixation under Fundamental Rule 22-B on temporary promotion / appointment, shall not be recovered in such cases or in cases where he is reverted to the lower post subsequently or if the person ceased to hold the higher post due to retirement or for any other reason, and therefore also, in my considered opinion, the recovery sought to be made is illegal.

9. In these cases, as pointed out by the learned counsel for the petitioners, out of aggrieved 14 Scientific Staffs, only 8 persons have come to Court, out of whom, 4 persons have already retired and 2 persons are to retire on October, 2016, and therefore, this Court is of the view that there is no point in seeking for recovery of excess amount paid. At this juncture, it is brought to the notice of this Court by the learned counsel appearing for the petitioners that the retirement benefits were not given to the retired employees so far.

10. For the foregoing discussions held and in the light of the judgment of the Hon'ble Apex Court cited supra, these Writ Petitions are allowed and the impugned orders are set aside. Consequently, connected Miscellaneous Petitions are closed. No costs. It is made clear that the issue relating to payment of retirement benefits, in respect of the petitioners those who have retired, should be taken up in a speedy manner and the retirement benefits should be paid to them as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.''

8. The reasoning given by the learned Single Judge, in our considered view, is not only by following the principles laid down in White Washer Case cited above which refers to Class-III and Class-IV posts prohibiting the recovery of the amount paid in excess, but also citing the G.O.Ms.No.773, Finance (F.R.I) dated

13.8.1975 which specifically states that the persons who worked in temporary promotional posts and after reversion, there shall not be recovery of the amount paid to them, while holding the promotional posts.

9. Normally, if a person was either mistakenly or temporary promoted, pending finalization of the seniority list or holding the higher post on, in charge capacity, whatever be the scale of pay given to him, while discharging duty in the said post, though he has been subsequently reverted, could not be recovered. The learned Single Judge has rightly allowed the writ petition filed by the writ petitioner and others. Thus, we do not find any illegality or infirmity in the order of the learned Single Judge.

10. In the result, the Writ Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Accountant General (A&E),
Pension 4 Section,
361, Anna Salai, Teynampet,
Chennai-18.

2. The Secretary,
State of Tamil Nadu,
Home Department (Police 18),
Fort St. George,
Chennai-9.

3. The Director i/c.,
Forensic Sciences Department,
30-A, Kamarajar Salai,
Mylapore, Chennai-4.

+1 CC to Mr.P. Dayalan, Advocate sr 42825.

+1 CC to Govt. Pleader sr 42763

W.A.No.1230/2018

RSY(CO)

SP(16/07/2018)