

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 12.02.2018
CORAM

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.1237 of 2018
and W.M.P.Nos.1546 & 1547 of 2018

P.Muthiyan

... Petitioner

Vs

1.The Personal Assistant [Development] to the
District Collector,
Perambalur.

2.The Treasury Officer,
Perambalur,
Perambalur District.

.... Respondents

Writ Petition filed under Article 226 of The Constitution of India seeking for issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent relating to the order in Pro.Na.Ka.No.4070/2017/PA2 dated 21.12.2017 to quash the same and to issue consequential directions to the respondents to allow the petitioner to continue to receive his Selection Grade of pay in PB Rs.9300-34800+4200[GP] with notional effect from 08.11.2009 and monetary effect from 01.03.2011 and to refund the recovered amount if any.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.R.P.Prathap Singh, GA

O R D E R

This writ petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Pro.Na.Ka.No.4070/2017/PA2 dated 21.12.2017 to quash the same and to issue consequential direction to the respondents to allow the petitioner to continue to receive his Selection Grade of pay in PB Rs.9300-34800+4200[GP] with notional effect from 08.11.2009 and monetary effect from 01.03.2011 and to refund the recovered amount if any.

2.Heard the learned counsel appearing for both sides and perused the materials available on record.

3.The case of the petitioner is that he is serving as jeep driver in Panchayat Union Office, Alathur, Permabalur District, from 08.11.1999 and his probation period was completed on 07.11.2001. He was granted benefit of Selection Grade in the

said post w.e.f. 08.11.2009 fixing his pay at Rs.11,130/- in the pay band of Rs.9300-34800+4200[GP]. Subsequently, G.O.Ms.No.234 Finance [PC] Department, dated 01.06.2009, was issued refixing the pay of all Government employees as per 6th Pay Commission recommendations as on 01.01.2006. Another G.O.Ms.No.65 Finance [PC] Department, dated 26.02.2011, was issued revising the scale of pay to the post of jeep drivers as Rs.5,200-20,200+4200[GP] and the selection grade for the scale of pay of Rs.5,200-20,200+4200[GP] was revised as Rs.9,300-34,800+4200[GP]. In view thereof, the petitioner's pay was revised in the Selection Grade as Rs.13,500/- with notional effect from 08.11.2009 and monetary effect from 01.03.2011 and arrears of pay of Rs.69,607/- was also drawn and disbursed to him. While so, all of a sudden, the impugned proceeding was passed cancelling the pay fixation, which is against the ratio laid down by the Apex court in the case of STATE OF PUNJAB AND OTHERS Vs RAFIQ MASHI [WHITE WASHER] and the relevant portion is given as 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 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 issued.
- 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."

4. Since recovery from the employees belonging to Class III and Class IV service of Group-C and Group-D service has been held as impermissible in law, the petitioner being a driver

belongs to Class III employee, the impugned order whatsoever is relied to be set aside. Therefore, in the light of the above order, this Court has no hesitation to set aside the impugned order and the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Personal Assistant [Development] to the
District Collector,
Perambalur.

2.The Treasury Officer,
Perambalur,
Perambalur District.

+1 cc to Mr.M.Ravi Advocate sr 10713

+1 cc to the Govt Pleader sr 11187

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