

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH
W.P.No.20099 of 2004

1. R. Ramakrishnan
2. A. Gnanaprakasam
3. Dr. S. Selvaraj
4. Dr. C. Asokan

... Petitioners

Vs.

1. Government of Tamil Nadu,
Rep. by its Secretary,
Animal Husbandry and Fisheries Dept.,
Fort. St. George,
Chennai - 600 009.
2. The Coimbatore District Co-operative
Milk Producer's Union Ltd.
Rep. by its Managing Director,
Pachapalayam, Perur Road,
Coimbatore - 10.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus to call for the records pertaining to order No.12554/MPII/2000-7, dated 16.11.2001 passed by the 1st respondent and quash the same.

For Petitioner : Mr.V.K. Rajagopalan

For Respondents : Mrs. T. Girija,
Government Advocate for R1
Mr. P. Narayanamurthy for R2

O R D E R

Heard Mr.V.K. Rajagopalan, learned counsel for the petitioner and Mrs.T.Girija, learned Government Advocate for the 1st respondent and Mr.P.Narayanamurthy, learned counsel for the second respondent.

2. By an order dated 16.11.2001, the first respondent herein had demanded the excess payment made in connection with the movement of 30 Junior Managers to the selection Grade Assistant Managers, which order is under challenge in the present writ

petition.

3. It is brought to the notice of this Court that apart from the petitioner herein, a number of Assistant Managers were served with similar recovery notices, who have filed writ petition in WP No.31551 of 2002, questioning the validity of the recovery notice. This Court, by an order dated 23.07.2013 had partly allowed the writ petition by setting aside the order insofar as it relates to the recovery to excess salary paid to the petitioners therein. The said order reads as follows :

5. When this matter is taken up for hearing, the learned counsel for the petitioners 1,6,8,10,23,24 & 29, would submit that though the prayer in the writ petition is in respect of proposed revision of the selection grade as well as the consequential recovery of the excess salary paid to the petitioner, now, the petitioners 1,6,8,10,23,24 & 29 do not press for any adjudication in respect of the revision of selection grade. However, they press for adjudication only in respect of the recovery of excess salary paid to the petitioners 1,6,8,10,23,24 & 29.

6. The learned counsel for the petitioners 1,6,8,10,23,24 & 29 would rely on a judgment of the Hon'ble Supreme Court in S.A.Qadir v. State of Bihar (2009(4) L.L.N 604) wherein, after referring to a number of judgments of the Hon'ble Supreme Court starting from Sahib Ram v. State of Haryana (1995 S.C.C (L&S) 248); Shyam Babu Verma and Others v. Union of India and others 91994 (2) L.L.N 465) and other cases, the Hon'ble Supreme Court has held that if any excess salary has been paid neither on any misrepresentation nor any false representation of the employee, then, such excess salary paid to the employee shall not be recovered. Relying on the above judgment, the learned counsel for the petitioners 1,6,8,10,23,24 & 29 would submit that in the case on hand also, the proposed recovery of excess salary paid to the petitioners 1,6,8,10,23,24 & 29, is not legal.

7. The learned Government Advocate appearing for the first

respondent and the learned counsel for the second respondent would however oppose this writ petition. According to the learned Government Advocate appearing for the first respondent, the proposed revision of selection grade granted already was made as per the clarification issued by the Government. The Government has clarified that the period spent on as Junior Manager by the petitioners 1,6,8,10,23,24 & 29 shall not be taken into account for the purpose of awarding selection grade to them because, it was on a different cadre. The learned Government Advocate would further submit that in this case, since, excess salary was paid based on the wrong order of selection grade issued, it was proposed to recover the excess amount paid to the petitioners 1,6,8,10,23,24 & 29.

8.I have considered the above submissions.

9.In so far as the proposed revision of the selection grade is concerned, since, the petitioners 1,6,8,10,23,24 & 29, have not pressed for any adjudication, I do not want to examine the correctness of the said revision of selection grade granted to the petitioners 1,6,8,10,23,24 & 29. But, so far as the recovery of excess amount paid to the petitioners 1,6,8,10,23,24 & 29, in my considered opinion, the petitioners 1,6,8,10,23,24 & 29, have got a case. If the selection grade is revised and if it is found that the salary had been paid excess to the petitioners 1,6,8,10,23,24 & 29, even then, the same cannot be recovered from the petitioners 1,6,8,10,23,24 & 29, in view of the fact that in the instant case, such excess salary was paid neither on any misrepresentation nor any false representation made by the petitioners 1,6,8,10,23,24 & 29.

10.As per the law laid down by the Hon'ble Supreme Court in the judgments cited supra, the respondents herein cannot

recover the excess amount paid to the petitioners 1,6,8,10,23,24 & 29. In such view of the matter, I am inclined to grant only limited relief to the petitioners 1,6,8,10,23,24 & 29 in respect of the excess amount of salary paid to them.

11. In the result, the writ petition is partly allowed in the following terms:-

(i) The revision of selection grade as proposed in respect of petitioners 1,6,8,10,23,24 & 29 as per the impugned order is confirmed;

(ii) The impugned order and the show cause notice issued by the second respondent dated 07.06.2002 are set aside only in so far as it relates to the recovery of the excess salary paid to the petitioners 1,6,8,10,23,24 & 29;

12. After the order was dictated, the learned counsel for the petitioners 1,6,8,10,23,24 & 29 would submit that the petitioners 1,6,8,10,23,24 & 29 have already retired from service but still, their retirement benefits have been withheld by the respondents because of the pendency of the present writ petition.

13. In view of the disposal of the writ petition and setting aside the order in respect of the recovery of excess salary paid, the respondents are directed to settle the retirement benefits of the petitioners 1,6,8,10,23,24 & 29 within a period of three months from the date of receipt of a copy of this order provided, there is no other legal impediment. No costs.

4. Since, the order impugned in the present writ petition is similar to that of the impugned order in W.P. No.31551 of 2002 and the facts are being the one and the same, it would be appropriate to pass similar orders in the present writ petition also.

5. In the light of the observations made by this Court, in its Order dated 23.07.2013 in W.P. No.31551 of 2002, the present impugned order dated 16.11.2001 is set aside, insofar as

it relates to recovery of excess salary paid to the petitioner is concerned. Accordingly, the writ petition stands partly allowed. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

vsi2

To

1. The Secretary,
Animal Husbandry and Fisheries Dept.,
Fort. St. George,
Chennai - 600 009.
 2. The Coimbatore District Co-operative
Milk Producer's Union Ltd.
Rep. by its Managing Director,
Pachapalayam, Perur Road,
Coimbatore - 10.
- +1 CC to Mr.V.K.Rajagopalan, Advocate sr 12486.
+1 CC to Mr.NARayanamoorthy, Advocate sr 12391.
+1 CC to Govt. Pleader sr 13483.

W.P.No.20099 of 2004

PP (CO)
SP (25/03/2019)

WEB COPY