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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.01.2020
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THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR
W.P.Nos. 23755 of 2013 and 16717 of 2014
and WMP.No. 1&2 of 2013 and 1&2 of 2014

1. R.Dharmaraj ..Petitioner in W.P.No. 23755 of 2013
2. R.Saminathan ..Petitioner in W.P.No. 16717 of 2014

Vs

1. The Government of Tamil Nadu,
rep, by its Principal Secretary Finance (Pay Cell) Department
Fort St.George,
Chennai - 600009.

2. The Director,
Agriculture Marketing,
SIPCOT Road, Guindy,
Chennai -32.

3.The Deputy Director,
(Agri-Business), Thiruvavarur,
O/o. The Deputy Director
Agriculture Business,
Periya Mill Street, Thiruvavarur.

.. Respondents in W.P.No. 23755 of 2013

1. The Government of Tamil Nadu,
rep, by its Principal Secretary Finance (Pay Cell) Department
Fort St.George,
Chennai - 600009.

2. The Director
Department of Agriculture Marketing and Agri
Business Guindy Chennai 32

3. The Director
Department of Agriculture,
Chepauk Chennai 5

4 The Deputy Director
(Agri Business) Agriculture Marketing,
Big Mill Street, Thiruvavarur

5 The Assistant Director of
Seed Certification, Thiruvavarur
W.P.No. 16717 of 2014

.. Respondents in



Prayer in W.P.No. 23755 of 2013: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the letter bearing No. Se. Mu. B. No. A/0369/2013 dated 5.8.2013 on the file of the 3rd respondent and quash the same consequently direct the respondents withdraw all further actions demanding to pay alleged excess pay as stated in the above order.

Prayer in W.P.No. 16717 of 2014: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceeding bearing No.Se.Mu.No.A/0639/2013 dated 5.12.2013 on the file of the 4th respondent and consequential proceeding bearing No.Se.MU.A.No.7861/2014 dated 15.6.2014 on the file of the fifth respondent and quash the Same and consequently direct the respondents withdraw all further actions demanding to pay alleged excess pay as stated in the above order.

For Petitioners : Mr. U.Karunakaran
(in both WPs)

For Respondents : Mr.S.Thangavelu, Spl.GP
(in both WPs)

COMMON ORDER

These Writ Petitions are taken up and disposed of by way of common order, since the issue involved in these Writ Petitions is common.

2. The prayer sought for in these Writ Petitions is to call for the records pertaining to the impugned orders passed by the respondent/department and quash the same consequently direct the respondents withdraw all further actions demanding to pay alleged excess pay as stated in the above order.

3. Brief facts leading to these writ petitions is that the petitioners were joined as Assistant Agriculture Officer in the year 1981 and subsequently promoted as Assistant Seed Officers in the year 2005 and as Agriculture Officers in the year 2006. At the time of their appointment to the post of Agriculture Officers, their pay was fixed in the pay scale of 6500-200-1100 as per Fundamental Rule 22(A). Their pay was revised as 9300 - 34800 + 4700 (grade pay) after implementation of sixth pay commission. The same scale of pay was fixed to the post of Assistant Engineers. Based on the One Man Commission report, the scale of pay to the post of Assistant Engineers was increased from 9300 - 34800 + 4700 to 5600 - 39100 + 5400. The petitioners along with similarly placed persons have submitted



representations to fix the scale of pay on par with the Assistant Engineers. The Government in G.O.Ms.o.448 Finance (Pay Cell) dated 31.12.2010 revised the petitioners scale of pay at Rs. 15,600-38100 + 5400. Subsequently under the guise of rectification of defects, the Government without examining the issues in detail, reduced the grade pay from Rs.5400/- to Rs. 5100/- vide G.O. Ms.No.71 Finance (Pay Cell) Department dated 26.02.2011.

3.1. Again, the Government vide G.O. Ms.No.242 Finance (Pay Cell) Department Dated 22.07.2013 degraded their pay from Rs.15,600 - 39100 + 5100 to 9300 - 34800 + 4900 to 15600 - 38100+ 5100. Subsequently, the 3rd respondent had issued impugned Executive Orders to the petitioners who were at the verge of retirement reducing their pay for the reason that there was an audit objection, which is contrary to the earlier G.Os and Rules. Further in the said impugned orders, the petitioners were directed to repay the excess pay as per the revised pay as fixed in the impugned orders. Challenging the same, the present writ petitions are filed.

4. Heard the learned counsel appearing for the petitioners as well as the learned Special Government Pleader appearing for the respondents and perused the documents available on record.

5. According to the learned counsel appearing for the writ petitioners, the respondents/Government have revised the scale of pay to the post of Agriculture Officers Officer vide G.O. (Ms).No.448, Finance (PC) Department, dated 31.12.2010 with notional effect from 01.01.2006 and monetary benefit from 01.12.2010. Subsequently, the Government vide letter No.51082/Pay Cell/2010-1, dated 15.09.2010 prepared additional fitment table for fixing the scale of pay to the employees. But, the respondent/department passed impugned orders without following the principles of natural justice and no reason has been adduced in the impugned order.

6. The learned counsel appearing for the petitioners further submitted that no reason has been stated in the counter affidavit that the respondent/department has wrongly fixed the revised scale of pay and without considering the Government Order and additional fitment table-16 based on the Government Order in G.O.(Ms).No.448, Finance (PC) Department, dated 31.12.2010 and for no opportunity was given to the writ petitioner for giving their explanations to the respondents/Government. It is the contention of the petitioner that the respondent neither in the impugned order nor in the counter affidavit stated that opportunity was given to the writ petitioners.



7. On the other hand, the respondents have filed counter affidavit stating that during internal audit, it was pointed out that fitment table announced by the Government vide letter No. 51082/PayCell/2010-1, dated 15.09.2010 is only applicable to the existing Agriculture Officer those who had been holding the post on 01.01.2006 and it is not applicable for petitioner since he was not an Agricultural Officer as on 01.01.2006 and he had joined as Agricultural Officer on 02.02.2006. The objection raised in the Audit to revise the pay of the petitioner was considered and decided to recover the excess amount paid to the writ petitioner. Accordingly, the excess pay that was paid to the writ petitioners was ordered to be recovered. Therefore, the orders issued for recovery of the excess payment made to the writ petitioners is just and correct.

8. Admittedly, the respondent has not made any statement with regard to the opportunities granted to the writ petitioners. The entire statement made in the counter affidavit is that the respondent has passed impugned order based on the audit objections. Further, the respondent has not furnished copy of the audit objection or any proof to show that the opportunities given to the petitioners while passing impugned orders. In view of the above, it is a clear violation of principles of natural justice. On this ground, this Court with no hesitation, inclined to quash the impugned orders passed by the respondent/department.

9. In the result, writ petitions are allowed with the following directions;

- i. Impugned orders dated 05.08.2013 and 15.6.2014 passed by the respondent/department are quashed and remitted back to respondent/department concerned .
- ii. The respondent/department shall issue notice to the petitioners within a period of two (2) weeks from the date of receipt of a copy of this order.
- iii. On receipt of explanations from the writ petitioners, the same shall be considered afresh by giving due opportunities to the petitioners and pass appropriate orders as expeditiously as possible, in any event, within a period twelve (12) weeks thereafter.
- iv. It is open to the writ petitioners to make out application to the authorities concerned, seeking other benefits as per Rules.



v. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary Finance (Pay Cell) Department
Fort St.George,
Chennai - 600009.
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Agriculture Marketing,
SIPCOT Road, Guindy,
Chennai -32.
- 3.The Deputy Director,
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O/o. The Deputy Director
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4. The Director
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Chepauk Chennai 5
- 5 The Deputy Director
(Agri Business) Agriculture Marketing,
Big Mill Street, Thiruvavarur
- 6 The Assistant Director of
Seed Certification,
Thiruvavarur

+2ccs to Mr.U.Karunakaran , Advocate SR.No. 6445,6446
+1 cc to Government Pleader Sr.No. 7674

W.P.No. 23755 of 2013, 16717 of 2014
and
and WMP.No. 1&2 of 2013 and 1&2 of 2014

A.SK(11/03/2020)