



WEB COPY

W.P. (MD) .Nos.12892 and 12893 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .Nos.12892 and 12893 of 2014

and

M.P. (MD) Nos.2 and 2 of 2014

1.C.Kamaraj	... Petitioner in W.P. (MD) No.12892 of 2014
2.K.Eswari	... Petitioner in W.P. (MD) No.12893 of 2014

-Vs-

1.The State of Tamil Nadu Represented by its
Principal Secretary to Government,
Finance Department,
Chennai-09.

2.The Commissioner,
Rural Development Department,
Panagal Building,
Saidapet, Chennai-15.

3The Director,
Local Fund Audit Department,
(Panchayat Union Pension),
4th Floor, Kuralagam, Chennai-108.

4.The District Collector,
Collectorate,
Karur District, Karur.

5.The Commissioner,
Thogamalai Panchayat Union,
Thogamalai Post, Karur District. ... Respondents in both W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 4th respondent in proceedings Na.Ka.Pa.Va 6/355/2012, dated 16.07.2014 and quash the same and consequently direct the respondents to fix the scale of pay of the petitioners in the ordinary grade in accordance with G.O.Ms.No.162 Finance (Pay Cell) Department, dated 13.04.1998 and consequently grant 5th and 6th pay commission recommendation pay to the petitioners by fixing the scale of pay at the rate of Rs.5200-20200+ Grade pay 2400 in accordance with G.O.Ms.No.316 Finacne (Pay Cell) Department, dated 26.08.20110 and to grant all attendant and monetary benefits.



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W.P.(MD).Nos.12892 and 12893 of 2014

For Petitioner
(in both W.Ps)

: Mr.M.Saravanakumar

For R1 to R4
(in both W.Ps)

: Mr.D.Muruganandham
Additional Government Pleader

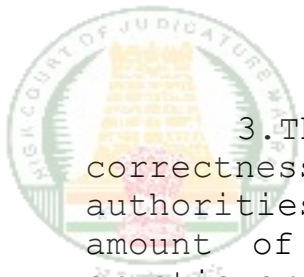
For R5
(in both W.Ps)

: Mr.Aayiram K Selvakumar

COMMON ORDER

The order of recovery passed by the fourth respondent, in proceedings, dated 16.07.2014, is sought to be quashed and further direction is sought for to fix the scale of pay of the writ petitioners in accordance with G.O.Ms.No.162 Finance (Pay Cell) Department, dated 13.04.1998.

2.The writ petitioners were appointed as Nursing Assistant on 29.09.1973 and 01.12.1975 respectively. The Special Grade was granted on completion of 20 years of service. Accordingly, the pay scale of the writ petitioners were fixed as per the Pay Rules and the Government Orders in force. However, the respondents issued the order of recovery based on the audit objections an earlier occasions in proceeding, dated 31.05.2013. The writ petitioners challenged the said recovery order in W.P.(MD) Nos.13365 of 2013 and 13366 of 2013. This Court passed a common order directing the respondents to issue show cause notice and on receipt of a explanation from the petitioners, further orders can be passed on merits and in accordance with law. Accordingly, the show cause notice was issued by the respondents and the writ petitioners were submitted their representations objecting the recovery. The merits and demerits of the issues were considered by the authority and the impugned order of recovery was passed in proceedings, dated 16.07.2014. The impugned order reveals that the fixation of scale of pay was erroneously vague and the excess salary paid to the employees are sought to be recovered. The earlier recovery order passed by the fifth respondent in proceedings, dated 31.05.2013 reveals that the salary of the petitioners were fixed based on G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009 and as per G.O.Ms.No.316, Finance (Pay Cell) Department, dated 26.08.2010. However, the fixation done by the authorities was erroneous and contrary to the recommendations of the pay commission. The fixation done with reference to G.O.Ms.No.316, Finance (Pay Cell) Department, dated 26.08.2010 was irregular and the pay scale mentioned in the State Government Order is not applicable to the writ petitioners. Accordingly, the excess payment paid to the writ petitioners were sought to be recovered.



3.This Court is of the considered opinion that the correctness of the fixation is to be verified by the competent authorities. If at all any erroneous fixation is made and excess amount of salary or pension had been paid, undoubtedly, the cryptic error can be rectified and correct fixation is to be made. In other words, errors, at any point of time can be corrected. However, the excess payment made cannot be recovered from the pensioners. Admittedly, the writ petitioners are retired Government employees and receiving pensions. At this length of time, if the excess amount is recovered, they will suffer and undue hardship would be caused. In this regard, the Hon'ble Supreme Court also held in the case of **State of Punjab Vs. Rafiq Masih** reported in **(2015) 4 SCC 334** in Paragraph 18 of the Judgment is extracted hereunder:-

"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).

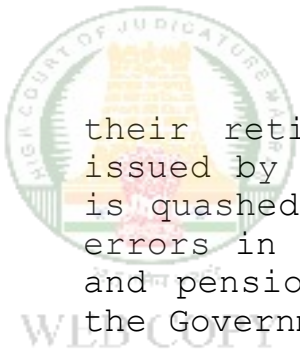
(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

4.As per the principles laid down in the Judgment cited supra, the erroneous fixation made is corrected by the competent authorities. However, the excess amount paid to the writ petitioners cannot be recovered at this length of time, after



their retirement. Accordingly, the impugned order of recovery issued by the fourth respondent, in proceeding, dated 16.07.2014, is quashed. However, the respondents are directed to correct the errors in the fixation of pay and continue to pay the correct pay and pension as applicable to the petitioners in accordance with the Government Orders and the Pay Rules in force.

5. With these directions, these writ petitions stand allowed in part. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

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Sub Assistant Registrar (CS)

sjj

To

1. The Principal Secretary to Government,
State of Tamil Nadu, Finance Department,
Chennai-09.

2. The Commissioner,
Rural Development Department,
Panagal Building,
Saidapet, Chennai-15.

3. The Director,
Local Fund Audit Department,
(Panchayat Union Pension),
4th Floor, Kuralagam, Chennai-108.

4. The District Collector,
Collectorate, Karur District, Karur.

+2 CC to Mr.M. SARAVANAKUMAR, Advocate (SR-20299[F] dated 16/10/2020)

+1 CC to SGP (SR-20490[F] dated 16/10/2020)

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15.10.2020

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