



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2020

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.21133 to 21137 of 2014
and
connected miscellaneous petitions

S.Raghavendhiran	... Petitioner in W.P.21133/14
B.Durairaj	... Petitioner in W.P.21134/14
K.Muthuraman	... Petitioner in W.P.21135/14
S.Muthu	... Petitioner in W.P.21136/14
V.Sivaprakasam	... Petitioner in W.P.21137/14

vs.

1)The Commissioner,
Director of Technical Education,
Guindy,
Chennai-600 025.
2)The Assistant Director,
Statutory Board Audit (Local Fund),
Madurai Corner,
Sivagangai,
Sivagangai District.
3)The Principal,
Annamalai Polytechnic College,
Chettinad 630 102,
Sivagangai District.

... Respondents in all Wps

Prayer in all the Writ Petitions :- Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the 3rd respondent relating to his order passed in Office Order in Letter No.447/A3/2014 dated 22.09.2014 quash the same.

For Petitioner : Mr.N.Tamilmani
For R1 & R2 : Mr.D.Muruganandham
Additional Government Pleader
For R3 : Mr.Isaac Mohanlal, Senior Counsel
for Ms.A.Aishwarya Sandaleena

COMMON ORDER

These writ petitions have been filed for issuance of a Writ of Certiorari, calling for the records of the 3rd respondent relating to his order passed in Office Order in Letter No.447/A3/2014 dated 22.09.2014 quash the same.



2.The case of the petitioners in all the writ petitions is that they were appointed as Laboratory Assistants with the minimum qualification of a pass in SSLC as per G.O.Ms.No.63, Finance, dated 26.02.2011 and worked for the past 30 years. The grade pay of Rs.2,400/- was fixed for the Lab Assistants appointed with the qualification of SSLC. Originally, the basic qualification for Laboratory Assistant is a pass in SSLC and the basic qualification for Technical Assistant in the laboratory is a pass in 8th standard with I.T.I Certificate. From the year 2009, as per G.O.Ms.No.220, Finance, dated 06.07.2009, both the Laboratory Assistant and Technical Assistant were required to possess the minimum educational qualification of passing I.T.I. So, persons who are having I.T.I qualification had more promotional avenues than the persons like the petitioners who have possessed only SSLC qualification even though they are more experienced and seniors. The Government Letter No.63305/PC/10-1, Finance, dated 08.01.2010 prescribes higher grade pay for selection grade and special grade and as per the said letter, grade pay for the selection grade and special grade of the petitioners were fixed at Rs.4,200/- and Rs.4,400/- respectively vide proceedings dated 19.12.2011 with effect from 01.01.2006 and by the impugned order, the 3rd respondent cancelled the above fixation of grade pay and revised the pay of the petitioners as per G.O.Ms.No.314, Finance, dated 22.07.2013 and the clarificatory letter No.41134/A3/2013 dated 31.12.2013 of the 1st respondent and sought recovery of the excess amount of pay given to the petitioners from 01.03.2011 to 30.06.2014, against which, the present writ petitions have been filed.

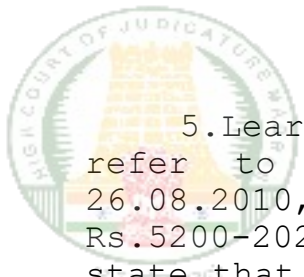
3.Learned counsel for the petitioners would state that without giving any opportunity to the petitioners, the impugned orders of recovery have been passed violating the principles of natural justice. He would further state that when there is no misrepresentation or fraud on the part of the petitioners regarding excess payment, the recovery orders are liable to be set aside. In this context, he would rely on the following judgments:-

(i)Syed Abdul Qadir and others vs. State of Bihar reported in (2009) 3 SCC 475.

(ii)Sahib Ram Verma vs. State of Haryana reported in 1995 Supp SCC (1) 18.

Thus, he would pray for setting aside the impugned orders.

4.The 1st respondent has filed counter affidavit and the learned Additional Government Pleader appearing for the 1st respondent would state that the impugned orders of recovery have been passed in accordance with G.O.Ms.No.314, Finance, dated 22.07.2013 issued by the Government and the clarificatory letter No.41134/A3/2013 dated 31.12.2013 of the 1st respondent and therefore, the interference of this Court is not necessary.



5.Learned Senior Counsel appearing for the 3rd respondent would refer to G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010, by which, the pay for the Lab Assistant was fixed at Rs.5200-20200+2600 with the monetary effect from 01.08.2010 and state that the 3rd respondent implemented the said G.O. and paid the benefit by taking the grant from the Government and subsequently, on 26.02.2011, G.O.Ms.No.63 came to be passed by which, the benefit given under G.O.Ms.No.338 was to be implemented from 01.03.2011 and again, by G.O.Ms.No.314, Finance, dated 22.07.2013, it was stated to be given from 01.04.2013. Since the said G.O was received by the 3rd respondent only on 15.07.2014, the 3rd respondent had been continuously giving the benefit of G.O.Ms.No.338 from 01.08.2010 till 15.07.2014 and therefore, the payment made during the said period is sought to be recovered by the impugned orders and since some of the petitioners reached the age of superannuation, the respondents 1 and 2 sought to make recovery from their retirement benefits.

6.Heard both sides.

7.The only issue to be decided in these cases is whether the recovery regarding excess payment not at the fault of the petitioners can be allowed to be recovered or not. The Apex Court while dealing with recovery and when there were difference of views expressed on the one hand permitting recovery and on the other hand not permitting recovery as found in the cases of Shyam Babu Verma vs. Union of India, (1994) 2 SCC 521 and Sahib Ram vs. State of Haryana, 1995 Supp (1) SCC 18 and on the other hand in the case of Chandi Prasad Uniyal vs, State of Uttarakhand, (2012) 8 SCC 417, the matter was referred to a larger bench and while disposing of the reference, the three-Judges Bench of the Supreme Court has held that the decisions of the Court based on different scales of Articles 136 and 142 of the Constitution cannot be best weighed on the same grounds of reasoning, thus, there is no conflict in the view expressed in the first two judgments and the latter judgment and accordingly, the reference was held to be unnecessary and the matters were sent back to the Division Bench for their appropriate disposal. Thereafter, the Apex Court in State of Punjab vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334, has summarised the following situations where recoveries are impermissible in law:-

- ''(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from 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.'

The above said judgment was followed in the judgment reported in (2016) 14SCC 267, High Court of Punjab & Haryana vs. Jagdev Singh.

8. In my considered opinion, the above judgment is squarely applicable to the present facts and circumstances of the case. The petitioners who are Lab Assistants come under Group 'D' categories of employees in Class-IV service and therefore, they fall within the first situation of the judgment reported in (2015) 4 SCC 334, where, the Apex Court has directed that recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) is impermissible.

9. Accordingly, the impugned order passed by the 3rd respondent in Letter No.447/A3/2014 dated 22.09.2014, is quashed and if any amount is recovered from any of the petitioners, pursuant to the impugned orders, the same shall be refunded by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

10. With the above direction, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
24.02.2020

12.03.2020

This matter is posted today under the caption 'for being mentioned' at the instance of the learned counsel appearing for the 3rd respondent.

2. The learned senior counsel appearing for the 3rd respondent would submit that pursuant to the impugned order, the 3rd respondent recovered the excess amount from the petitioners and the same has been deposited with the 1st respondent. This Court, vide order, dated 24.02.2020, quashed the impugned order, dated 22.09.2014 and a direction was issued to refund the said amount and he would pray that since the amount recovered was deposited with the 1st respondent, it is the 1st respondent, who has to refund the amount and would state that the order is not specific about who has to pay the amount.

3. Heard the learned counsel for the petitioners, learned Additional Government Pleader appearing for the respondents 1 and 2 as well as learned senior counsel appearing for the 3rd respondent.



4. There is no dispute that the amount has been deposited with the 1st respondent. In view of the same, paragraph No.9 of the order, is modified as follows:

"9. Accordingly, the impugned order passed by the 3rd respondent in Letter No.447/A3/2014 dated 22.09.2014, is quashed. As the recovered amount has already been deposited into the account of the 1st respondent, the 1st respondent is directed to refund the recovered amount to the petitioners, within a period of twelve weeks from the date of receipt of a copy of this order".

Sd/-

Assistant Registrar (Cr1 Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

bala
To

1) The Commissioner,
Director of Technical Education,
Guindy,
Chennai-600 025.

2) The Assistant Director,
Statutory Board Audit (Local Fund),
Madurai Corner,
Sivagangai,
Sivagangai District.

3) The Principal,
Annamalai Polytechnic College,
Chettinad 630 102,
Sivagangai District.

• 5cc to Mr.N.TAMILMANI ,Advocate, SR No.7904,7905,7906,7907,7908
+1cc to M/s.Special Government Pleader, SR No.8090

COMMON ORDER MADE IN
W.P(MD)Nos.21133 to 21137 of 2014
DATED : 24.02.2020

W.P(MD)Nos.21133 to 21137 of 2014