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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.18337 OF 2016

AND

W.M.P.NOS.16044, 16045 & 16046 OF 2016

(THROUGH VIDEO CONFERENCING)

1.R.Ravikumar

2.S.Prabhakaran

3.G.Dhivya

... Petitioners

..Vs..

1. The Director of Agriculture,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Joint Director of Agriculture,
No.43/578 B, Sir C.V.Raman,
2nd Cross Street, Rajajipuram - II,
Tiruvallur - 602 001.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the Joint Director of Agriculture, Tiruvallur, the second respondent herein made in (i) Se.Mu.O.No.AA.1/8912/2015-1 dated 15.04.2016, (ii) Se.Mu.O.No.AA.1/8912/2015-2 dated 15.04.2016, (iii) Se.Mu.O.No.AA.1/8912/2015 dated 18.04.2016 issued to the petitioners respectively, quash the same and direct the respondents herein to continue to pay to the petitioners the same pay in the post of Assistant (Selection Grade) in the scale of pay of Rs.9300-34800 + Rs.4200 (Grade Pay) fixed prior to the passing of impugned orders with all consequential service and monetary benefits if any due to them and disburse all the accrued arrears if any due to the them within a short date that may be fixed by this Court.



For Petitioners : Mr.K.Rajkumar

For Respondents : Mr.L.S.M.Hasan Fizal, G.A.

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O R D E R

In this Writ Petition, the petitioners have challenged the impugned recovery notices issued to the petitioners by the second respondent to recover the amounts from them which were paid to them based on the interpretation placed by the Principal Secretary to the Government vide Letter No.14483/CMPC/2011-1, dated 05.01.2012 pursuant to the G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009.

2. The petitioners were promoted to the post of Assistant during 2007 and 2008 respectively. Prior to that when the petitioners were serving as Junior Assistants, they were drawing salary under Selection Grade for having served more than 10 years service with the respondents. G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009 was issued and re-fixed the salaries of the Government servants with the implementation of the 6th Pay Commission by the Central Government for the Central Government employees. The benefit under above G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009 was to be conferred to the employees with effect from 1st January, 2006 (01.01.2006) notionally and with monetary benefit from 1st January, 2007 (01.01.2007) and thereafter 01.02.2011.

3. The petitioners who were drawing a Selection Grade of Rs.4000-100-6000 were given an enhanced pay of Rs.5200-20200 + 2400 (Grade Pay) with effect from 01.01.2007. A clarification was issued by the Chief Secretary to the Government of Tamil Nadu vide letter dated 08.11.2010 bearing reference Govt. Letter No.63305/Pay Cell/2010-1, pursuant to which, the petitioners started receiving the higher salary which was objected by the Audit Department and later the impugned recovery notices were issued to recover a sum of Rs.3,98,141/- from first petitioner, a sum of Rs.4,20,367/- from the second petitioner and a sum of Rs.4,30,080/- from the third petitioner.

4. These recovery notices were challenged by the petitioners preliminary on the ground that recovery cannot be made based on the objection of the Audit Department. It is submitted that before any recovery notice was made, the respondents shall issue Show Cause Notice to the employees and therefore, the impugned recovery notices issued by the second respondent were in violation of principle of natural justice and are liable to be quashed. The learned counsel for the petitioner drew attention to the following decisions:-



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- i. Bhagwab Shukla Vs. Union of India and Others, (1994) 28 Administrative Tribunals Cases 258 (Supreme Court of India).
- ii. M.Raju Vs. The Chairman, Tamil Nadu Electricity Board and others, order dated 06.11.1997 passed by this Court in W.P.No.19961 of 1994.
- iii. D.Palavesamuthu Vs. Tamil Nadu Administrative Tribunal and others, (2006) 1 M.L.J. 143.
- iv. S.Ganapathy Vs. Commissioner of Commercial Taxes, Chennai and Another, (2006) 3 M.L.J. 532.
- v. R.Elangovan and Others Vs. The Commissioner, Erode Municipality, Erode and Others, order dated 22.11.2007 passed by this Court W.P.Nos.40588 to 40593 of 2005.
- vi. C.L.Pasupathy Vs. Engineer in Chief (WRO) and Chief Engineer (General) PWD, Chennai and Another, (2009) 2 MLJ 491.
- vii. S.Savarimuthu Vs. The Director, Local Fund Audit and Another, order dated 10.09.2009 passed by this Court in W.P.No.11707 of 2007.
- viii. S.Selvaraj Vs. The Commissioner of Municipal Administration and Others, order dated 30.04.2010 passed by this Court in W.P.No.964 of 2009.
- ix. P.Poosari Vs. The State of Tamil Nadu, rep. By Secretary to Government, Municipal Administration and Water Supply Department and others, order dated 14.03.2012 passed by the Madurai Bench of this Court in W.P. (MD) No.12208 of 2009.
- x. A.Kumar Vs. Director of Technical Education, Chennai and Others, 2012 (7) SLR 707 (Mad.).
- xi. M.S.Sheela Evanjaline and Others Vs. Municipal Commissioner, Kuzhithurai Municipality, Kanyakumari District, 2015 (2) CWC 297.
- xii. Goswami Vs. Punjab State Power Corporation Limited and Others, 2020 (2) SLR 921 (Pb. & Hry.).
- xiii. Ashok Kumar Vs. State of Punjab and Others, 2020 (5) SLR 261 (Pb. & Hry.).
- xiv. Urmila Garg Vs. State of Haryana and Others, 2020 (6) SLR 412 (Pb. & Hry.).
- xv. A.Ravi Vs. The Managing Director, Tamil Nadu Civil Supplies Corporation and Another, order dated 11.02.2021 passed by the Madurai Bench of this Court in W.P.(MD) No.9720 of 2012.

5. The learned counsel for the petitioners also referred to the decision of the Hon'ble Supreme Court in State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others, (2015) 4 SCC



334 and stated that since the petitioners are Class-III employees under Tamil Nadu Ministerial Service Rules / General Rules (Tamil Nadu State and Subordinate Service Rules), recovery cannot be made.

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6. The learned counsel for the petitioners submits that the impugned recovery notices have to go in the light of the paragraph 18(i), 18(iii) and 18(iv) of the State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334.

7. Defending the impugned recovery notices, the learned Government Advocate appearing for the respondents submits that admittedly the higher amount has been paid by the respondents to the petitioners and the respondents are entitled to recover the same from the petitioners and therefore, this Writ Petition is liable to be dismissed.

8. By way of Rejoinder, the learned counsel for the petitioner submits that the respondents have in their counter stated as follows:-

If the representations are made by the applicants in proper manner, this will be taken up and their pay will be revised. But, at present, there is no such order and hence, the petitioners could not claim automatic appointment and fixation of pay in the Selection Grade Assistant post. Hence, the statement of the petitioners is totally non-maintainable either under law or on facts.

9. He therefore submits that this Writ Petition can be allowed in the light of the above submission.

10. Heard the learned counsel for the petitioners and the learned Government Advocate appearing for the respondents and perused the evidences on record.

11. It is admitted that the petitioners are Class-III employees under Section 4 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and therefore, in the light of the decision of the Hon'ble Supreme Court in State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334, the impugned recovery cannot be sustained. Paragraph 18 of the said decision reads 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 herein above, 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.

12. The above passages in 18(i), (iii) and (iv) squarely applies to the facts of the present case. Therefore, the impugned recovery notices have to go. However, the petitioners are still serving in the Government. Any alteration in the conditions of service including change in salary even if it has been wrongly based on the Government letter and clarification, notices has to be issued to such employees who were likely to be effected by revision in the pay scale.

13. Considering the same, the impugned recovery notices are liable to be quashed. While quashing the impugned recovery notices for payments made upto the date of impugned recovery notices, the impugned recovery notices shall be treated as Show Cause Notices to show cause as to why the salary of the petitioners for the period thereafter shall not be revised and why the scale of pay as determined in the impugned recovery



notices should not be adopted from the date of issue of impugned recovery notices dated 15.04.2016 and 18.04.2016 prospectively.

14. The respondents are also at liberty to issue fresh Show Cause Notices for revising the scale of pay of the petitioners by stating the correct reasons as to why the pay revision should not be effected prospectively from the date of the aforesaid impugned notices which stand quashed in accordance with provisions of the Act.

15. Liberty is given to the petitioners to give their representations/reply to the Show Cause Notices to the respondent for considering their case. Such proceedings to re-fix the scale of pay shall be completed within a period of three months from the date of receipt of a copy of this order. In case the petitioners have received any amount in excess for a period after 15.04.2016 / 18.04.2016, the respondents are entitled to recover the same in accordance with law.

16. This Writ Petition is accordingly disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Director of Agriculture,
Ezhilagam, Chepauk,
Chennai - 600 005.
2. The Joint Director of Agriculture,
No.43/578 B, Sir C.V.Raman,
2nd Cross Street, Rajajipuram - II,
Tiruvallur - 602 001.

+3cc to Mr.K.Rajkumar, Advocate, S.R.No.42195

+1cc to the Government Pleader, S.R.No.42625

W.P.No.18337 of 2016
and W.M.P.Nos.16044, 16045
& 16046 of 2016

BS (CO)
CS/22/09/2021