



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.7165 of 2012

and

M.P (MD) .No.2 of 2012

WEB COPY

T.Jayakodi

... Petitioner

Vs.

1.The District Forest Officer,
Ramnad-cum-Sivaganga Forest Division,
Sivaganga.

2.The Divisional Forest Officer,
Social Forestry Division,
Madurai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the order in Pro.No.4027/2010/E dated 13.03.2012 (served on 08.05.2012), quash the same and to issue consequential directions to the respondents to allow the petitioner to continue to draw enhanced Selection/Special Grade as per order dated 22.07.2010 of the first respondent.

For Petitioner : Mr.C.Deepak
for M/s.M.Ravi
For Respondents : Mr.M.Muthugeethayan
Special Government Pleader

O R D E R

This writ petition is filed by the petitioner seeking for issuance of a writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the order in Pro.No.4027/2010/E dated 13.03.2012 (served on 08.05.2012), quash the same and to issue consequential directions to the respondents to allow the petitioner to continue to draw enhanced Selection/Special Grade, scale of pay as per the order of the first respondent, dated 22.07.2010.

2.In the affidavit filed in support of this petition, it has been averred that the petitioner is a Driver working in the Forest Department on regular basis from 18.01.1994 onwards and he was conferred with Selection Grade/Special Grade scale of pay on completion of the requisite years of service. According to the petitioner, he is entitled to the benefits of G.O.Ms.No.162, Finance



(PC) Department, dated 13.04.1998 and he is eligible to claim Selection Grade scale of pay, as per the revised scale of pay of Rs.5,000-8,000. In similar circumstances, the very same issue came up for consideration before the Division Bench of this Court in W.A.Nos.383 to 391 of 2009 etc., Batch, wherein, the Division Bench of this Court has granted the benefits to the employees therein. Following the same, the petitioner has filed a writ petition in W.P. (MD).No.8611 of 2010, which was allowed in his favour and subsequently, the petitioner was given Selection Grade and Special Grade, as per G.O.Ms.No.162, dated 13.04.1998 as per the order of this Court. As against the order passed in the writ appeal, the State preferred S.L.P before the Hon'ble Apex Court in S.L.P.No.35969/2009. The said S.L.P was allowed in respect of awarding Selection Grade and Special Grade and finally, the Hon'ble Apex Court concluded that the persons, in the post of Driver in various departments, are only entitled to get the ordinary Special Grade and Selection Grade in terms of Serial No.6 of Schedule-II of 1998 Rules, i.e., at Rs.3,200-4,900, Rs.4,000-6,000 and Rs.4,300-6,000 respectively, and set aside the other portion of the order in the writ appeal and further held that this Court erred in fixation of such pay scales to the Drivers in terms of Serial No.8 of Schedule II, fixing Selection Grade and Special Grade scales of pay of Rs.5,000- 8,000 and Rs.5,500-9,000 respectively. Consequent upon the order passed by the Hon'ble Apex Court, the respondent passed an order of recovery and also for refixation of pay. The pay of the petitioner has been refixed and he has been awarded Selection Grade and Special Grade scale of pay in terms of the order of the Hon'ble Apex Court and, thereafter, the authority vide the impugned order dated 13.3.12, while cancelling the pay fixation, passed an order of recovery of the amounts already paid. Challenging the same, the present writ petition is filed.

3.The learned counsel appearing for the petitioner submits that Selection Grade and Special Grade was awarded in favour of the petitioner, based on the order of this Court and there is no wilful suppression on the part of the petitioner. Hence, the order of recovery is bad in law, in view of the decision of the Hon'ble Apex Court, in the case of **State of Punjab & Ors. - Vs - Rafiq Masih (White Washer), etc., (2015 (4) SCC 334)** wherein the Apex Court held thus :-

"13. First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir case [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] recognised, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for



the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee."

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 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 is 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 again 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."

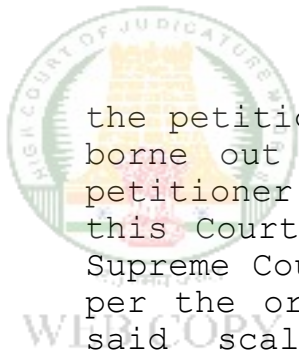
4. Per contra, the learned Special Government Pleader appearing for the respondents submitted that in view of the order passed by the Hon'ble Apex Court by setting aside the order passed by the Division Bench granting Selection Grade and Special Grade, the present petition is liable to be dismissed and no interference is called for with the order impugned, as the said order is in consonance with the directions issued by the Hon'ble Supreme Court.

5. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

6. The facts in the present case are not in dispute. This Court, by its order dated 22.07.2010 passed in W.P(MD)No.8611 of 2010 granted enhanced Selection/Special Grade, in the light of the Division Bench judgment in W.A.Nos.383 to 391 of 2009. However, on the Special Leave Petition preferred by the State, the said decision was reversed by the Hon'ble Apex Court and the portion of the order fixing Selection Grade and Special Grade scale of pay of Rs.5,000-8,000 and Rs.5,500-9,000 respectively were set aside and it was held therein that the employees, who were similarly placed like that of the petitioners are entitled to only the scale of pay of Rs.4,000-6,000 and Rs.4300-6000 towards Selection Grade and Special Grade scale of pay.

7. It is evident from the decision of the Hon'ble Apex Court that the petitioners are only entitled to ordinary Selection Grade and Special Grade pay scale in terms of Serial No.6 of Schedule II of the 1998 Rules, i.e., at Rs.3,200-4,900, Rs.4,000-6,000 and Rs.4,300-6,000 respectively. Therefore, the impugned order was passed to the extent of re-fixing the scale of pay of the petitioner in terms with the directions of the Hon'ble Apex Court in the above scale of pay which was well founded and the same does not require any interference.

8. Insofar as the recovery of amounts, which have already been paid to the petitioner is concerned, it is even not the case of the respondents that on account of suppression and fraud perpetrated by



the petitioners, the enhanced scale of pay was given to them. It is borne out by record that the enhanced scale of pay given to the petitioner was based on the order passed by the Division Bench of this Court. Though the respondents went on appeal to the Hon'ble Supreme Court and they refixed the scale of pay of the petitioner as per the order of the Hon'ble Supreme Court and started to pay the said scale, it was not on account of any suppression or misrepresentation on the part of the petitioner, for the said higher scale granted to them. Therefore, the petitioner having been granted higher scales of pay at the behest of the respondents themselves in view of the order passed by the Division Bench of this Court, and hence, the recovery sought to be made by the respondents are squarely against the ratio laid down by the Hon'ble Apex Court in *Rafiq Masih's case (supra)*. In the light of the above undisputed position, this Court is of the considered view that the recovery of higher scale of pay, granted by the respondents on their own volition, which is sought to be recovered from the respondents is wholly impermissible and no recovery can be made in the light of the decision of the Hon'ble Apex Court in *Rafiq Masih's case*.

9. For the reasons aforesaid, this writ petition is allowed in part by confirming the refixation of pay as ordered in the impugned order, but setting aside the recovery of the amount already paid to the petitioners. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The District Forest Officer,
Ramnad-cum-Sivaganga Forest Division,
Sivaganga.

2.The Divisional Forest Officer,
Social Forestry Division,
Madurai.

+1 CC to M/s.SPL GP (SR-3074[F] dated 03/02/2021)

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VB (22.03.2021) 5P 4C