



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)No.9720 of 2012
and M.P (MD) .No.1 of 2012

WEB COPY

A.Ravi

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road, Kilpauk,
Chennai-10.

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Regional Office,
Collectorate Complex,
Dindigul.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, by calling for the records of the 1st respondent in Na.Ka.No.AE10/99867/2010 dated 20.02.2012 and consequential order of the 2nd respondent in Na.Ka.No.E2/7201/2010 dated 03.04.2012 and quash the same and direct the respondents to fix the Grade pay of the petitioner as Rs.1,900/-.

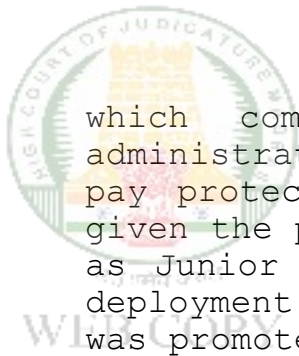
For Petitioner : Mr.V.Perumal

For Respondents : Mr.S.Ramasamy, Standing Counsel

O R D E R

This writ petition is filed by the petitioner for the issuance of the Writ of Certiorarified Mandamus, by calling for the records of the first respondent in Na.Ka.No.AE10/99867/2010 dated 20.02.2012 and consequential order of the second respondent in Na.Ka.No.E2/7201/2010 dated 03.04.2012 and quash the same and direct the respondents to fix the Grade pay of the petitioner as Rs.1,900/-.

2.The case of the petitioner is that he was appointed as Junior Helper, in the year 1991 in the Technical wing of the respondent Corporation at Modern Rice Mill, Kadachanenthall, Madurai, and thereafter, he was transferred to Thirumangalam Godown as Watchman. As per the proceedings of the first respondent, dated 10.04.2008, the surplus employees, who were working in the Technical side were absorbed to the general wing of the Corporation. As per the proceedings, the Helpers, who were redeployed to the Watchman post



which comes under the administrative wing were taken into administrative side on some conditions. As per the conditions, the pay protection was given to the employees and the petitioner was given the pay scale of Rs.2550-55-2660-60-3200. While he was working as Junior Assistant in the office of the second respondent, after deployment from the Technical wing to the administrative wing, he was promoted as Bill Clerk and subsequently as Junior Assistant. The 6th pay commission has granted Grade pay to the employees and the pay of the employees who were working as Helpers in the Technical side, were deployed to the administrative side are paid the higher salary. Without considering the said pay protection, the respondents have wrongly calculated the petitioner's salary and reduced his Grade pay from Rs.1900/- to Rs.1300/-. The fixation of salary in the lower side, which adversely affects the petitioner and thereby, the petitioner has filed the present writ petition challenging the said order.

3.The learned counsel for the petitioner submitted that though the petitioner was transferred from Technical side to administrative side, as per proceeding dated 10.04.2008, pay protection was given to the petitioner. Contrary to the said pay protection, the order of recovery is unsustainable one. Further, the petitioner again was given lower scale of pay on par with other juniors. Hence, the order of the first respondent in fixing lower grade pay is wholly unsustainable and unreasonable. Hence, he prays for allowing the present Writ Petition.

4.Per contra, the learned Standing Counsel appearing for the respondent Corporation would submit that the petitioner was working as Special Grade Helper at Modern Rice Mill, Kadachanendal and he was governed by the Standing Orders of Modern Rice Mills. The petitioner's service, promotion and the benefits are confined to the said order. Due to surplus vacant post of Helper in the Modern Rice Mill and to avoid retrenchment, without affecting the service with pay protection, the respondent deployed the petitioner and similarly placed persons in the general side, vide proceedings, dated 10.04.2008. Pursuant to which, the petitioner joined duty as Watchman on 21.04.2008 in the second respondent office to the post of Watchman and Packer, carry the same scale of pay and subsequently, based on the regular service in the office, he was promoted as Bill Clerk and joined duty on 01.12.2008. Further, as per instruction of the first respondent, to fix the pay of the petitioner in the cadre of Watchman, the petitioner will be given pay protection, but the time scale of pay will be allowed as applicable to the post of Office Assistant, Watchman, Packer etc. Accordingly, he prays for dismissal of the present writ petition.

5.Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials available on record.



6.The facts in the present case are not in dispute. Admittedly, the petitioner was appointed as Junior Helper, in the year 1991 in the Technical wing of the respondent Corporation at Modern Rice Mill, Kadachanenthal, Madurai. It is also admitted that surplus employees were working in the technical side and in order to avoid retrenchment, the respondents have absorbed to the General Wing of the Corporation. While transferring the person from the technical side to general wing pay protection was given, as per the proceedings dated 10.04.2008. Further, on perusal of the said letter, it is seen that due to surplus employees in certain Modern Rice Mills, in the year 2004, orders have been issued to utilise the services of the surplus Modern Rice Mills Helpers in the vacant post of Watchman with pay protection wherever necessary and to avoid retrenchment without affecting their service conditions as per the "Standing Orders". The persons, who had worked in the technical side, were transferred to General Wing and the request of the individuals have been placed before the Board and the Board resolved to absorb the Modern Rice Mill Helpers now working in the General side as Watchman/Packer on re-deployment basis as one time absorption, as per the minutes of the Board Meeting held on 28.03.2008. Accordingly, the Modern Rice Mill Helpers whose names, as furnished in the Annexure are ordered to be absorbed into General side with the following conditions:

1.They will be given pay protection but the time scale of pay will be allowed as applicable to the post of O.A., Watchman and Packer ie., Rs.2550-55-2660-60-3200.

2.Their seniority will be fixed as last in the seniority list of O.A., Watchman and Packer in the Region in which they will be given posting.

3.The elevation to the post of Selection Grade/Spl. Grade if any applicable to the posts will be considered in accordance with rules.

4.The services rendered by them in the MRM will be continued only for the purpose of Gratuity.

5.Leave available at their credit as per MRM Standing Orders will be taken into account in General side.

7. Admittedly, the petitioner was initially working as Helper and transferred to Thirumangalam Godown as Watchman. Further, as per the proceedings of the first respondent, dated 10.04.2008, the Helpers were redeployed to the Watchman Post, which comes under the administrative wing on some conditions. After deployment to the administrative wing, the petitioner was promoted as Bill Clerk and subsequently as Junior Assistant. But the time scale of pay will be allowed as applicable to the post of O.A., Watchman and Packer. In view of the 6th Pay commission, the pay was revised on the above said condition. Hence, the order impugned in the writ petition cannot be interfered with.



8. Insofar as the recovery of amounts, which have already been paid to the petitioner is concerned, it is not the case of the respondents that on account of suppression and fraud perpetrated by the petitioner, the enhanced grade pay was given to the petitioner. The fixation of pay scale, including grade pay was done at the behest of the respondents and the petitioner, in no way, could be found fault with. The respondents, having granted higher scale of pay to the petitioner, the said higher pay granted to the petitioner cannot be recovered as has been laid down by the Hon'ble Apex Court in the case of **State of Punjab & Ors. - Vs - Rafiq Masih (White Washer), etc., (2015 (4) SCC 334)**. In the light of the above undisputed position, this Court is of the considered view that the recovery of higher grade pay, granted by the petitioner by the respondents, which is on their own volition, which is sought to be recovered from the petitioner 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 the order of recovery passed by the respondents insofar as the amount already paid to the petitioner is concerned, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road, Kilpauk, Chennai-10.

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Regional Office, Collectorate Complex, Dindigul.

+1 CC to M/s.V.PERUMAL, Advocate (SR-4838[F] dated 12/02/2021)

W.P. (MD)No.9720 of 2012
and M.P (MD) .No.1 of 2012

11.02.2021

NSM(CO)

TR(23.06.2021) 4P 4C

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