



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/2/2022

C O R A M

THE HON'BLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.223 of 2014

a n d

M.P.Nos.2 and 3 of 2014

1. T. Chandran
2. K.K.Muthumani
3. S. Raju
4. S.T.Ramakrishnan
5. H.N.Chandran
6. R.T.Rajan
7. L. Sagadevan

... Petitioners

Vs

The Joint Director of Horticulture
Udhagamandalam
Nilgiris District.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records in pursuant to the impugned order issued by the respondent in Proceeding Se.Mu.Aa.No.A1/11046/2013 dated 25/11/2013 and quash the same and consequently, direct the respondents to continue all the increments as per the original fixation.

For petitioners ...Ms.Swathi Subramaniam
for Mr.Prem Narayan

For respondent ...Mr.L.S.M.Hasanfizal
Additional Government Pleader

O R D E R

The petitioners herein were appointed as Assistant Agricultural Officers and they were promoted to the post of Deputy Agricultural Officers on 29/12/2007. The petitioners had retired from the services on 29/2/2012, 31/10/2012, 30/11/2012, 31/1/2013, 28/2/2013, 30/4/2013 and 30/6/2013, respectively.



2. After retirement, the impugned order of recovery, dated 25/11/2013 has been issued, seeking to recover from their pension stating that they have not passed the Departmental tests and therefore, not eligible for grant of certain increments while in service. Hence instant writ petition has been filed praying for the relief as stated supra.

3. When the matter is taken up for hearing, Ms. Swathi Subramaniam, learned counsel appearing for the petitioners argued on merits. The learned counsel for the petitioners would submit that as far as the recovery aspect alone is concerned, this Court may follow the principles laid down by the Supreme Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334. In that case, the Supreme Court has held that in the case of any excess payment made to any Government servant and in the absence of any misrepresentation from his side, such excess payment need not be recovered, particularly with reference to Class-III and Class-IV Government servants. The learned counsel would submit that the recovery alone may be interfered with. The Court has further held that order of recovery should not be made from the retired employees or employees who are due to retire within one year.

4. In the instant case, the ruling of the Hon'ble Supreme Court would squarely be applicable as these persons are no more in service at the time when the impugned order was issued and they have also belong to Clause III service as claimed by the learned counsel for the petitioners.

5. In view of the categoric pronouncement of law of the Hon'ble Supreme Court which is the law of the land, this Court being bound by the principle, has no option except to accept the case of the petitioner on the aspect of recovery.

6. In the said circumstances, the impugned order is set aside only in so far as they seek to recover the excess payment from the petitioners.



7. The writ petition is allowed to the extent indicated above. There will be no order as to costs. Consequently, the connected M.P.Nos.2 and 3 of 2014 are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

mvs.

To

The Joint Director of Horticulture,
Udhagamandalam,
Nilgiris District.

+1cc to Mr.R.Prem Narayan, Advocate Sr.10019
+1cc to the Government pleader Sr.10743

Writ Petition No.223 of 2014

gj[col]
srg 17/03/2022