



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.509 of 2022

and

WMP (MD) Nos.390 to 392 of 2022 & 2928 of 2022

1.S.Ramesh Kannan
2.P.Manikandan
3.M.balakrishnan

... Petitioners

-Vs-

1.The Director,
Fire & Rescue Services Department,
Chennai - 600 008.

2.The District Officer,
Fire & Rescue Services Department,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the impugned order of the 2nd respondent in Pa.Aa.No.109/2021, dated 08.10.2021 and quash the same as illegal.

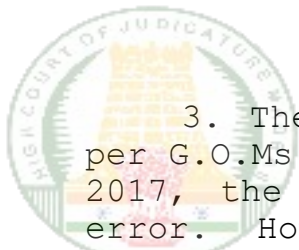
For Petitioners : Mr.M.Purushothaman
For Mr.M.Kannan

For Respondents : Mr.D.Sadiq Raja
Addl.Govt.Pleader

O R D E R

The order of recovery issued by the 2nd respondent in proceedings dated 08.10.2021 is under challenge in the present Writ Petition.

2. The petitioners are working as upgraded Leading Firemen in the Fire and Rescue Services Department, Theni District. The short question raised is that whether the recovery order has been passed inconsonance with the principles to be adopted.



3. The learned counsel for the petitioners reiterated that as per G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11th October, 2017, the petitioners are eligible to draw pay and there was no error. However, the order impugned dated 08.10.2021, reveals that the upgradation in the post of Leading Firemen with effect from 01.12.2017 was granted with revised scale of pay and while granting benefit of re-fixation, the authorities found that some mistakes crept and accordingly, action was initiated to rectify the error committed during re-fixation of pay of the petitioners in the upgraded post of Leading Firemen.

4. The order impugned unambiguously stipulates that the recovery was imposed only in respect of excess payment made for the upgraded Leading Firemen, who were promoted after 01.12.2017. If at all any factual discrepancies arises, it is left open to the writ petitioners to approach the Competent Authority or approach the Appellate Authority, by way of an appeal. However, the principles for recovery as enunciated by the Hon'ble Supreme Court of India are that the recovery in normal circumstances cannot be imposed, even in case, excess payment was made for Group-C and Group-D employees. However, if fixation is done due to misrepresentation or at the time of re-fixation, the employees have given undertaking before the Competent Authority, the recovery is permissible.

5. It is made clear that unjust enrichment of excess pay at no circumstances be permitted. The Government employees are entitled for the pay, as applicable to their cadres. Any excess payment will result in unjust enrichment and the financial loss to the State exchequer, as the salary is being paid from the tax-payers money. Therefore, recovery is permissible and in extreme hardship, the Supreme Court considered that excess payment need not be recovered. Therefore, the principle of Law is that the Government employees are entitled for the pay for which they are eligible. Excess payment, if any identified, is to be recovered in all circumstances. The Courts have considered not to recover the excess pay only on certain circumstances, where there is an extreme hardship in the event of recovering the excess pay. Therefore, restriction is applicable in certain circumstances and in the present case, counter affidavit filed by the respondents reveals that the petitioners have given undertaking that any excess payment, if found subsequently, shall be recovered and the relevant paragraph 8 of the counter in this regard is extracted hereunder:-

"8. Under the above said circumstances, it is submitted that Rule 6 of Tamil Nadu Revised Pay Scale Rule, 2017, is as follows:-

6. Date of migration of existing employees to Revised Pay Structure and exercising of option:

(1) An existing employee shall have the option of determining the date of migration to revised pay structure by electing (a) to migrate to the revised



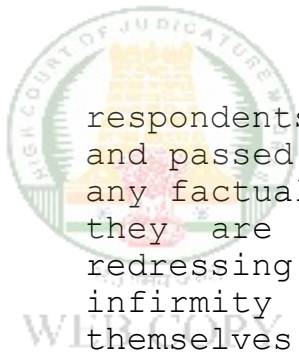
pay structure with effect from 1.1.2016 or (b) to continue to draw pay in the existing pay structure until the date on which he earns his next or any subsequent increment in the existing pay structure or until he vacates his post or ceases to draw pay in that pay structure and to migrate to the revised pay structure on such date; or (c) to migrate to the revised pay structure from the date of promotion between 1-1-2016 and the date of notification of these rules.

The above said Rule was clarified by the Government in letter No.57907/PC/C/2017-1 dated 13.11.2017. Hence, the petitioners are not eligible to exercise their option to come over to the revised pay scale rules with effect from 1.12.2017 I.e., the date on which the petitioner joined duty in the upgraded leading fireman post. By mistake, the first respondent issued orders for fixing the pay based on their option exercised to come over to the Tamil Nadu revised pay scale rules, 2017 on 1.12.2017. Later the same was found erroneous based on rule 6 of the Tamil Nadu Revised Pay Scale Rules, 2017 and also the clarification issued by the Government in letter NO.57907/PC/C/2017-1 dated 13.11.2017. Hence, the respondent issued orders to revise the pay as per rules in force. Moreover, it is pertinent to point out that the petitioners had given undertaking as follows while exercising their option to come over to the Revised Pay scale Rules, 2017 with effect from 1.12.2017.

" I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the government either by adjustment against future payments due to me or otherwise without insisting for any prior notice."

6. The counter further reveals that the petitioners were upgraded as Leading Firemen on 01.12.2017, which was after the cut off date ie., 11.10.2017 prescribed in Rule No.6 of Tamil Nadu Revised Pay Rules, 2017. But, in the counter, the Rule has been wrongly quoted.

7. However, in the counter filed by the respondents reveals that requisite show cause notices were issued to the writ petitioners on 22.02.2021 and the petitioners have not given any reply for a period of eight months. Under those circumstances, the



respondents have invoked the undertaking given by the petitioners and passed the impugned order of recovery. Therefore, in respect of any factual discrepancies, if any made available to the petitioners, they are at liberty to approach the Appellate Authority for redressing their grievances. However, this Court do not find any infirmity in respect of the order of recovery, as the petitioners themselves has given an undertaking that in the event of any excess pay, the same shall be recovered from the salary of the writ petitioners. Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (AD-II)

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/ /2022

Sub Assistant Registrar(CS)

To

1.The Director,
Fire & Rescue Services Department,
Chennai - 600 008.

2.The District Officer,
Fire & Rescue Services Department,
Theni District.

+1 CC to M/s.M.KANNAN, Advocate (SR-11133[F] dated 10/03/2022)

+1 CC to M/s.SPL GP (SR-11144[F] dated 10/03/2022)

W.P. (MD) No.509 of 2022

09.03.2022

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MPK

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