



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:09.03.2022

CORAM:

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THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.5944 of 2019
and WMP No.4767 of 2019

C.Kaliyaperumal

... Petitioner

Vs.

1.The Government of Tamil Nadu
Agricultural Department
Represented by its Secretary
Fort St. George,
Chennai 600 009.

2.The Director of Agricultural Marketing and
Agri Businesses,
Sippert Road,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai 600 032.

3.The Secretary
Tiruchirappalli Market Committee
Tiruchirappalli 620 008.

4.The Accountant General (A&E)
No.361 Anna salai
Chennai 600 018.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of recovery passed by the 3rd respondent herein made in Na.Ka.No.A1/114/2015 dated 07.01.2015 in continuation of the order of refixation of pay in order No.B/4364/2014 dated 30.12.2014 and quash the above orders and direct the respondents 1 and 2 to pass orders on the petitioner appeal dated 05.01.2015, 09.01.2015, 10.06.2015, 17.12.2016, 22.05.2017, 20.07.2017 and 13.09.2017 and thereby refund the excess pay recovered from the petitioner's salary on the basis of fixation of notional seniority and cause refixation of pay, emoluments and pension in accordance with law.



For Petitioner : Mr.M.Joseph Thatheus Jerome
For Respondents : Mr.A.K.Manikkam for R1 to R3
Special Government Pleader
Mr.P.Gunasekaran for R4

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ORDER

The order of recovery dated 07.01.2015 to recover the excess salary paid pursuant to the notional promotion, which is sought to be recovered, is under challenge in the present writ petition.

2.The petitioner was working as Superintendent in Tamil Nadu Agricultural Produce Marketing Committee, Trichy and retired from service on attaining the age of superannuation on 31.01.2015. Before 23 days of retirement, on 07.01.2015, the order of recovery has been issued stating that the excess payment made prior to 26.10.2013 has to be recovered. No show cause notice was issued providing an opportunity to the petitioner. Therefore, the petitioner could not able to defend his case at the time of passing the impugned order of recovery.

3.On merits, the learned counsel for the petitioner reiterated that the proceedings of the Director of Agricultural Marketing and Agri Businesses, Chennai 32 dated 26.04.2013, was passed in implementation of the orders passed in W.A.No.387 of 2008 dated 16.08.2008. The said order states as follows:

"Consequent to the modifications in the date of promotions, the monetary benefits if any already availed by the incumbents concerned need not be recovered. However, their pay should be fixed based on this promotion orders from the date mentioned against their names vide Annexure I and II of this order. Further it is ordered that the employees will be eligible to get the monetary benefits only from the date from which they actually officiated in the particular post as per proviso Rule 27(17) of the Fundamental Rules."

4.Relying on the above order of the Director, the learned counsel for the petitioner states that the monetary benefits, if any, that will be availed by the incumbents concerned need not be recovered. When such an order has been issued by the Director, in contrary to the said order, the recovery order has been issued.

5.This Court is of the considered opinion that the issue regarding excess payment had already been considered by the head of the Department and an order was issued not to recover the excess amount, if at all paid to the incumbents by virtue of notional promotion. This being the factum especially the order impugned is



in violation of the decision taken by the Director and therefore, untenable. Consequently the impugned order passed by the third respondent in proceedings in Na.Ka.No A1/114/2015 dated 07.01.2015 is quashed and the writ petition stands allowed. No costs. Consequently connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

RR

To

1.The Secretary

The Government of Tamil Nadu
Agricultural Department
Fort St. George,
Chennai 600 009.

2.The Director of Agricultural Marketing and

Agri Businesses,
Sippet Road,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai 600 032.

3.The Secretary

Tiruchirappalli Market Committee
Tiruchirappalli 620 008.

4.The Accountant General (A&E)

No.361 Anna salai
Chennai 600 018.

+1 CC to M/s.M.JOSEPH THATHEUS JEROME, Advocate (SR-11252[F]
dated 10/03/2022)

+1 CC to M/s.SPL GP (SR-11532[F] dated 11/03/2022)

W.P. (MD)No.5944 of 2019

09.03.2022

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