



W.A(MD)No.684 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.11.2022

PRONOUNCED ON : 17.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.A(MD)No.684 of 2019

and

C.M.P(MD)Nos.6030 and 6032 of 2019

- | | |
|-------------------------|--|
| 01.S.Maheswari | |
| 02.S.Shanthi | ... Appellants 1 and 2 /Writ Petitioners 3 & 4 |
| 03.A.Faritha | |
| 04.S.Sathyavathy | |
| 05.M.Uma Rani | ... Appellants 3 to 5/Writ Petitioners 10 to 12 |
| 06.E.Roseline Lobo | |
| 07.Gerrad C V.Diamond | ... Appellants 6 & 7/Writ Petitioners 14 & 15 |
| 08.V.Kannan | ... 8 th Appellant/17 th Writ Petitioner |
| 09.S.Thirumalai | |
| 10.T.Oppayee | |
| 11.S.Manimekala | |
| 12.G.Kumaresan | ...Appellants 9 to 12/writ petitioners 19 to 22 |
| 13.S.Soundravalli | |
| 14.R.Sureshkumar | |
| 15.M.Nallathambi | |
| 16.S.Usha Rani | |
| 17.S.Uma Maheswari | |
| 18.D.Somasundaram | |
| 19.S.Ramkumar | |
| 20.A.Alagesan | |
| 21.S.Muruganandam | |
| 22.S.Sivanadham | |
| 23.M.Suthanthirachelvan | |
| 24.A.Govindaraju | |
| 25.S.Elango | |
| 26.T.Ravichandran | |
| 27.S.Balasubramanian | |
| 28.R.Sridevi | |



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29.R.Manoharan
30.N.Sellam
31.S.Ramasamy
32.S.Padmini
33.C.Muthulakshmi
34.A.Muthu
35.K.Gunavalagan
36.T.Thilagam
37.S.Sumathi
38.M.Paneerselvam
39.R.Sridhar
40.N.Amarjothi
41.G.Tharasing
42.K.Ramachandran
43.G.Rajakumari
44.N.Manimozhi
45.M.M.Kathamuthu
46.C.Kumar
47.N.Muralidharan
48.G.Kandasamu
49.M.Philip Kumar
50.P.R.Srinivasan
51.R.Thamayanthi

... Appellants 13 to 29/writ petitioners 26 to 42

... Appellants 30 & 31/writ petitioners 44 & 45
... 32nd Appellant/48th writ petitioner

... Appellants 33 to 38/writ petitioners 51 to 56

... Appellants 39 to 51/writ petitioners 58 to 70

vs.

01.S.Maharaja
02.R.alamelu
03.R.Naseema
04.C.Kaladevi
05.W.Christopher Suresh
06.S.Lakshmi
07.R.Chitra
08.A.Vasantha
09.V.Ragini Devi
10.M.Maragathamani
11.R.Jeyaseeli
12.R.Gowri
13.R.Krishnaveni
14.S.Shanmugam
15.T.Punniamoorthi
16.P.Jayanthi
17.M.Pushpalatha
18.N.T.Ganesh Babu

... Respondents 1 & 2/writ petitioners 1 & 2

... Respondents 3 to 7/writ petitioners 5 to 9
... 8th respondent/13th writ petitioner
... 9th respondent/16th writ petitioner
... 10th respondent/18th writ petitioner

... 14th respondent/43rd writ petitioner

... Respondents 15 & 16/writ petitioners 46 & 47

... Respondents 17 & 18/writ petitioners 49 & 50



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19.V.Usharani

... 19th respondent 57th writ petitioner

20.The Director,
Local Fund Audit Department,
Kuralagam,
Chennai.

21.The Regional Joint Director,
Local Fund Audit Department,
Trichirappalli Corporation Water Tank Complex,
1st Floor, Dindigul Road,
Trichirappalli – 620 001.

22.The Assistant Director,
Local Fund Audit Department,
Bharathidasan University,
Palkalaiperur,
Tiruchirappalli – 620 024.

23.The Bharathidasan University,
Rep. by its Registrar,
Palkalaiperur,
Tiruchirappalli – 620 024.

... Respondents 20 to 25/Respondents

(Since the appellants do not have any claim against
the respondents 1 to 19 in the above writ appeal notice
may be dispensed with)

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, against the
order dated 14.06.2019 in W.P(MD)No.8032 of 2015.

For Appellants	: Mr.J.Anand Kumar for (AA1, 3, 4, 6 to 8, 18, 22, 25, 29, 3 7, 38, 45 and 47) No Appearance for (AA2, 5, 9 to 17, 19 to 21, 23, 24, 26 to 28, 30 to 36, 39 to 44, 46 and 48 to 51)
For R-23	: Mr.V.R.Shanmuganathan
For R20 to 22	: No Appearance



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JUDGMENT

M.S.RAMESH, J.

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The above writ appeal is filed challenging the order dated 14.06.2019 passed in W.P(MD)No.8032 of 2015.

2. The brief facts leading to the filing of this writ appeal are as follows:

(i) Citing certain anomalies in the grant of promotion to the Post of Superintendent and in the grant of Selection Grade in the Cadre of Assistant/ASO, in comparison to one Mr.KGunalan, when the appellants herein had sought for rectification of the anomalies, they were granted Selection Grade in the cadre of Assistant/ASO, with effect from 09.06.2001, on which date the said Gunalan was granted Selection Grade.

(ii) Pursuant to certain audit objections raised by questioning the exemption granted to Mr.Gunalan from the Account Test and the consequential orders, the Local Fund Audit Department had passed an order in Na.Ka.No. 543/A2/2015 dated March 2015, recommending for refixation of the scale of pay of the appellants herein, together with recovery of the excess amount paid. This order came to be challenged before a learned Single Judge in W.P(MD)No.8032 of 2015, which came to be dismissed on 14.06.2019. This order of dismissal is put under challenge in the present writ appeal.



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3. Heard Mr.J.Anand Kumar, learned counsel for appellant Nos.1, 3, 4, 6 to 8, 18, 22, 25, 29, 37, 38, 45 and 47 and Mr.VR.Shanmuganathan, learned counsel for the 23rd respondent.

4. The factual circumstances leading to passing of the order impugned in the writ petition is that on 01.01.1987, Mr.K.Gunalan was appointed as a Junior Assistant in Bharathidasan University. The appellants herein had entered service as Junior Assistant in the year 1990. As per the Statutes Governing the University, the Junior Assistants are required to pass an Account Test for being promoted as Assistant. While all the Appellants had passed the Account Test, the aforesaid Gunalan failed to qualify in the Test. Accordingly, the appellants were promoted to the Post of Assistant on regular basis with effect from 15.12.1997. Later, Mr.Gunalan was exempted from passing of the Account Test, based on the recommendation of a One Man Committee dated 08.06.2001 and accordingly, he was promoted as an Assistant on 08.06.2001 and his seniority was placed below the appellants herein, who were promoted earlier on 15.12.1997.

5. In view of G.O.Ms.No.210 Personnel and Administrative Reforms (PER.S) Department dated 11.03.1987, Mr.Gunalan was granted Selection Grade in the Post of Superintendent with effect from 09.06.2001 and later converted as Selection Grade in Assistant/ASO Cadre. By virtue of the Selection Grade granted to Mr.Gunalan, the appellants herein, who were seniors



to Mr.Gunalan, were also granted Selection Grade in the Cadre of Assistant/ASO, with effect from 09.06.2001. Later, audit objections seems to have been raised in the grant of exemption to Mr.Gunalan, pursuant to which, an *ad hoc* Committee was constituted which had held that there was no illegality in grant of benefits. In this background, Mr.Gunalan expired on 13.07.2011 and the DCRG benefits were also disbursed to his legal heirs on 01.11.2011. However, in the case of the appellants herein, audit objections that the exemptions and benefits granted to Mr.Gunalan were incorrect, the present impugned order has been passed for refixation of their scale of pay, as well as for recovery of excess payments made.

6. The learned Single Judge had held that the said Gunalan was senior to the appellants and that the discrepancy of promoting him without passing of the Account Test by granting exemption was removed. Such findings however seems to be contrary to the actual facts involved in the present case. Though Mr.Gunalan was senior in view of his initial entry into service, the appellants herein were promoted earlier to the Post of Assistant since they had qualified themselves in the Account Test. It is thereafter, Gunalan was exempted from the Account Test and was promoted to the Post of Assistant after the appellants herein and his seniority was also placed below that of the appellants herein. Likewise, the findings of the learned Single Judge that the discrepancy of granting exemption and promotions was later removed also appears to be factually incorrect. On the other hand, when audit objections were initially



raised questioning the exemption granted to Mr.Gunalan, an *adhoc* Committee was constituted which dealt with the sanctity of the exemption and promotions granted to Mr.Gunalan and held that there was no illegality in grant of these benefits. In the background of these factual misconstruction of facts, the resultant decision of the learned Single Judge to dismiss the writ petition may warrant interference, insofar as it relates to ordering for recovery of the excess payments made.

7. This apart, the order impugned in the writ petition, insofar as it seeks for recovery of the excess payments made to the appellants herein, cannot be sustained in view of the settled legal proposition that such recovery of excess payment from employees belonging to Group “C” and “D”, is impermissible in law, when such excess payments are made due to the mistake committed by the University. In the case of *State of Punjab and others v. Rafiq Masih(White Washer) and others* reported in (2015) 4 SCC 334, such a proposition came to be held in the following manner:

“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:-

[1] Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

[2] Recovery from retired employees, or employees who are



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due to retire within one year, of the order of recovery.

[3] 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.

[4] Recovery in 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 against an inferior post.

[5] 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.”

8. In the instant case, it is not in dispute that the appellants herein belonged to Group “C” and “D” employees, when they were granted the monetary benefits. It is also not in dispute that the excess payments made by the University relates to the year 2001, which is almost 14 years prior to the impugned order. That apart, the payments were made on the basis of the Government Order in G.O.Ms.No.68 Personnel & Administrative Reforms (PER-M) Department, dated 23.01.1986 which provides that if a Junior in service is granted Selection Grade, the seniors would also be entitled to said Grade. Apparently, stepping up the scale of pay of the appellants herein on par with his juniors was not the mistake committed by the appellants herein, but rather by the University. In this background, the ratio laid down by the Honourable Supreme Court in *White Washer's* case(supra) in Paragraph No.18(1) and (3), would squarely apply to the case of the appellants herein and therefore, the consequential recovery would be impermissible in law.



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Furthermore, it is now brought to the notice of this Court that most of the appellants herein had retired from the service and in view of Clause 18(2) of *White Washer's* case (supra), recovery of excess payments from retired employees is also impermissible.

9. Though we find that the order impugned in the writ petition may have no legal validity to recover the excess payments made to the appellants herein, the re-fixation of the scale of pay that was ordered may not require interference.

10. For all the foregoing reasons, the order of the learned Single Judge passed in W.P(MD)No.8032 of 2015 dated 14.06.2019 is set aside. Consequently, the order impugned in the writ petition in Na.Ka.No.543/A2/2015 dated March 2015, insofar as it orders for recovery of the excess payments made to the appellants herein, stands quashed. The impugned order, insofar as it provides for re-fixation of the scale of pay of the appellants herein, does not require interference. The Writ Appeal is partly allowed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

[M.S.R.,J.] & [N.A.V.,J.]

17.11.2022

Index : Yes/No

Internet : Yes/No

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**M.S.RAMESH, J.
AND
N.ANAND VENKATESH, J.**

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**JUDGMENT MADE IN
W.A(MD)No.684 of 2019**

17.11.2022