BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.04.2022
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) Nos.16315 & 8354 of 2019 and 20992 of 2021
and
W.M.P.(MD) Nos.6568, 6569 & 19440 of 2019
and 17597 of 2021

W.P.(MD) No.16315 of 2019 :-

K.Subramaniyan ... Petitioner in all W.Ps.

-vs-

1.The State of Tamil Nadu,
Rep., by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George, Chennai-600 009.

2.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk, Chennai-600005.

3.The Secretary cum General Manager,
Tamil Nadu Water Supply and Drainage Board (TWAD),
Head Office, Chepauk, Chennai-600005.

4.The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,

Circle Office, Ganapathy Nagar,
Medical College Road, Thanjavur.

5.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
RWS Division, Ganapathy Nagar,
Medical College Road, Thanjavur.

6.The Principal Accountant General Audit-II,
O/o.The Principal Accountant General Audit-II,
Lekha Pariksha Bhavan,
361, Annasalai, Chennai-600 018. ... Respondents in all W.Ps.

[R6 - *Suo motu* impleaded vide order dated 28.04.2022 in W.P.(MD) Nos.16315 & 8354 of 2019 & 20992 of 2021]

Prayer in W.P.(MD) No.16315 of 2019:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of

Mandamus directing the 3rd respondent to sanction revised pay and pay of pension as granted in the orders of the 5th respondent proceedings in Proc.No.950/F.Asst/EA/2019-1/EE-RWS-TNJ dated 30.05.2019 issued by the 5th respondent.

Prayer in W.P.(MD) No.8354 of 2019:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the impugned proceedings issued by the 3rd respondent in Letter No.P6/60505/Pen/HO/2010-1 dated 28.03.2019 and the subsequent impugned order in Letter No.P6/60505/Pen/HO/2010-1 dated 28.03.2019 and to quash the same.

Prayer in W.P.(MD) No.20992 of 2021:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records from the 4th respondent relating to the proceedings dated 20.10.2021 bearing Reference No.6608/A1/Me.Po.Thanjai/2021 and quash the same as illegal, arbitrary, vindictive, without jurisdiction and consequently direct the respondents to pay the amount already recovered and the difference in the amount paid and reduced based on the impugned proceedings together with 18% interest per annum.

In all Cases :-

For Petitioner	:	Mr.N.G.R.Prasad Senior Counsel assisted by Mr.F.Deepak and Mr.K.Balakrishnan
For R1	:	Mr.A.K.Manikkam Special Government Pleader
For RR2 to 5	:	Mr.Veerakathiravan Additional Advocate General assisted by Mr.B.Vijayakarthikeyan
For R6	:	Mr.P.Gunasekaran

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COMMON ORDER

W.P.(MD) No.16315 of 2019 has been instituted to direct the 3rd respondent to sanction revised pay and pay of pension as granted in the orders of 5th respondent in Proc.No.950/F.Asst/EA/2019-1/EE-RWS-TNJ, dated 30.05.2019.

2. W.P.(MD) No.8354 of 2019 has been instituted to quash the proceedings issued by the 3rd respondent in Letter No.P6/60505/Pen/HO/2010-1 dated 28.03.2019 and the subsequent

impugned order in Letter No.P6/60505/Pen/HO/2010-1 dated 28.03.2019.

3. W.P.(MD) No.20992 of 2021 has been instituted to quash the proceedings of the 4th respondent dated 20.10.2021. Further direction is sought to direct the respondents to pay the amount already recovered and the difference in the amount paid and reduced based on the impugned proceedings together with 18% interest per annum.

4. The petitioner was initially appointed as Work Inspector in Tamil Nadu Water Supply and Drainage Board (TWAD Board) on 06.08.1971 and his services were provincialized with effect from 06.08.1976. The petitioner was promoted to the post of Junior Assistant on 07.02.1996 and further promoted as Assistant on 12.02.2007. The petitioner was allowed to retire from service on attaining the age of superannuation on 30.09.2010. Proposal for settling the retirement benefits was forwarded by the Executive Engineer, TWAD Board/5th respondent by refixing the pay of the writ petitioner. Accordingly, the pay of the writ petitioner was revised and pension was also fixed as per the proceedings. Accordingly, the petitioner is receiving the pension. While so, the 5th respondent initiated action for recovery of excess payment made to the writ petitioner by stating that the pay and pension was erroneously fixed in violation of the pay fixation rules and other orders of the Board. Thus, the 5th respondent issued order of recovery by refixing the petitioner's pay and pension. The said order was challenged in W.P.(MD) No.37015 of 2016 and the order was set aside and the matter was remanded back for fresh consideration on the ground that no show cause notice was issued to the writ petitioner before passing the order of recovery. Again the writ petitioner filed W.P.(MD) No.6851 of 2012 challenging the order of the 5th respondent herein dated 03.04.2012. The said order was also quashed and the matter was again remanded back to the authorities for passing fresh orders. Subsequently, the petitioner claimed interest and filed another writ petition also.

5. Perusal of the facts reveals that three writ petitions were filed by the writ petitioner and they were remanded back for the purpose of fresh consideration on one ground or the other ground.

6. The learned Senior Advocate for the petitioner made a submission that the fixation was done in accordance with the procedures contemplated. The petitioner is continuously receiving the pension and therefore, the impugned orders of recovery now passed are not in consonance with the pay rules and therefore, the writ petitions are to be considered.

7. The learned Additional Advocate General raised objections regarding the contentions raised by the petitioner and states that huge sum of public money has been erroneously drawn by way of salary

through irregular and illegal pay fixation done at the instance of the petitioner himself. The excess amount of salary, arrears, pension amount etc., are running to the tune of more than Rs.50,00,000/-. The petitioner had already filed three writ petitions. W.P.(MD).No.8354 of 2019 has been filed, challenging the order of recovery dated 28.03.2019. The petitioner had already received the entire amount including the excess amount over and above his eligibility. Thus, the respondent passed the order of recovery. The subsequent recovery order has been challenged in W.P.No.20992 of 2021. The petitioner filed yet another writ petition in W.P.(MD).No.16315 of 2019, seeking a direction to adopt the pay fixation done by an authority on 30.05.2019. Such a fixation done on misrepresentation and at the collusion of the establishment by the petitioner is sought to be recovered by the respondents. The learned Additional Advocate General contended that the illegalities and irregularities in drawing the excess amount by the petitioner is no doubt an error and there is a possibility of collusion, which is also to be enquired into.

8. Irregular pay fixation done by the establishment with the collusion of the petitioner resulted in huge monetary loss to the respondent Board. Further, it remains as a bad precedent and several such similarly placed employees will also seek for the similar fixation, which will amount to unjust gain to the employees and financial loss to the State Exchequer / respondent Board.

9. An employee is not entitled to draw excess money from the Board by way of erroneous fixation or misrepresentation or otherwise. The respondent Board is a “State” and therefore, the interest of the institution is to be protected by the Government. Several lakhs of rupees were drawn based on the erroneous fixation of pay and in the present case, the petitioner himself had prepared the pay fixation chart. During verification, the authorities found that the fixation was not only erroneous, an excess amount of arrears of pension had been drawn in a calculated manner and with an intention.

10. Considering the arguments as advanced between the learned Senior Advocate for the petitioner and the learned Additional Advocate General for the respondent, undoubtedly, unjust enrichment by an employee, at no circumstances be permitted. An employee is entitled to receive his pay and salary in accordance with the pay rules in force. In the event of tracing out any illegality or irregularity or excess payment or misrepresentation or otherwise, such excess payment paid is to be recovered by the competent authorities by adopting the correct fixation of pay in accordance with the rules in force. In such circumstances, recovery of excess amount paid is certainly permissible.

11. The Hon'ble Supreme Court of India in the matter of recovery, held that, if any extreme hardship is found in the event

of recovering an excess payment from employees, then the same need not be recovered. However, the principles cannot be applied in all cases, where, there is an intentional erroneous fixation or misrepresentation or the employee has given an undertaking or otherwise. In such circumstances, recovery of excess amount paid is permissible and no employee can be allowed to draw the excess money from the State Exchequer and in the event of any such financial loss to the State, then the same is liable to be recovered. In the present case, the petitioner himself prepared pay fixation chart. The learned Additional Advocate General made a submission that there is a possibility of collusion with the establishment and the respondents are conducting enquiry in that aspect also. The petitioner himself has given an undertaking that in the event of any excess payment traced out in future, the same shall be recovered from the petitioner in one lump sum. Therefore, the petitioner now cannot turn around and say that, he is not liable to pay the excess amount received by him.

12. The respondents have contended that some of the officials of the respondent Board also had colluded with the petitioner in respect of the fixation of pay and the same will result in unjust enrichment and further, many other similarly placed employees will also seek for the same fixation of pay and the same will cause huge monetary loss to the respondent Board. In the present case, the excess amount drawn is running more than a sum of Rs.50,00,000/- and such a huge irregularity in the matter of fixation of pay and drawing of arrears of salary, pension etc., can never be allowed and a correct fixation is to be adopted in all respects, settling the terminal and pensionary benefits to the petitioner. The writ petitioner had already filed three writ petitions one after another, challenging the orders of recovery merely on the ground that no show cause notice was issued to him. However, the opportunities were granted to the writ petitioner by the respondent Board subsequently and thereafter, orders of recovery were passed.

13. Verification of fixation is to be done by the authority, who is well-versed in fixation of pay and establishment matters. Under these circumstances, the learned Additional Advocate General made a submission that the correctness of the fixation of pay, payment of arrears and pension in favour of the writ petitioner is to be verified by the Principal Accountant General of Tamil Nadu, who is the competent audit authority in the matter of fixation of pay, pensionary benefits etc., to the State Government employees. The said submission made by the learned Additional Advocate General was accepted by the learned Senior Advocate appearing on behalf of the petitioner and the learned counsel for the petitioner also submitted that the petitioner has no objection for the purpose of such thorough verification by the Principal Accountant General of Tamil Nadu, who is an independent authority.

14. Mr.N.G.R.Prasad, learned Senior Advocate for the

petitioner made a submission that the petitioner may be provided with an opportunity of personal hearing before the authorities competent enabling him to place all the records to establish his case. The said submission is also considered in view of the fact that complete opportunity is required, as the respondents plead that huge amount has been taken away by way of erroneous fixation and by claiming huge amount of arrears from the respondent-Board, resulting financial loss to the tune of Rs.50 Lakhs.

15. Considering the complex facts and circumstances, it would be appropriate to refer the matter to the Principal Accountant General of Tamil Nadu for the purpose of resolving the issue regarding the correct fixation of pay to the writ petitioner in accordance with the pay rules in force.

16. The learned counsel appearing on behalf of the Principal Accountant General of Tamil Nadu made a submission that with reference to the respondent Board, the Principal Accountant General of Audit-II, Lekha Pariksha Bhavan, 361, Annasalai, Chennai – 600 018 is the appropriate authority. Thus, the Principal Accountant General Audit-II has been impleaded *suo motu* as 6th respondent in the writ petition for the purpose of completing the exercise of verifying the correctness of the pay fixation, payment of arrears, etc., to the petitioner.

17. In view of the facts and circumstances, the petitioner and the respondents 1 to 5 are at liberty to submit entire facts and circumstances along with the relevant materials before the 6th respondent / Principal Accountant General Audit-II, for the purpose of conducting an enquiry and fix the correct scale of pay to the petitioner with reference to his Service Records. It is brought to the notice of this Court that the office of the 6th respondent is receiving remuneration from the TWAD Board for the purpose of conducting audit and therefore, they are the competent authorities for conducting enquiry and pass orders in the matter of fixation of pay, pension etc., Thus, this Court is inclined to pass the following orders:

(i) The impugned orders of recovery passed by the 3rd respondent in W.P.(MD) No.8354 of 2019 and the 4th respondent in W.P.(MD) No.20992 of 2020 are quashed;

(ii) The petitioner and the respondents 1 to 5 are at liberty to submit the facts, circumstances, documents, and materials available on record before the 6th respondent within a period of two weeks from the date of receipt of a copy of this order.

(iii) The 6th respondent / Principal Accountant General Audit-II, is directed to conduct an enquiry in respect of the correctness of pay fixation and payment of arrears of salary, terminal benefits, pensionary benefits etc., to the writ petitioner and pass appropriate orders, fixing the correct scale of pay as per the rules in force.

(iv) The Principal Accountant General Audit-II, is directed to provide one opportunity of personal hearing both to the writ petitioner and to the respondent Board to present their respective cases. The date, time and venue of the enquiry fixed may be communicated to the parties.

(v) The 6th respondent is directed to complete the said exercise of completion of enquiry and passing final orders within a period of six weeks from the date of receipt of a copy of this order.

(vi) The respondents 1 to 5 are directed to initiate all appropriate actions based on the orders passed by the 6th respondent / Principal Accountant General Audit-II. If at all any collusion, irregularity, illegality or misrepresentations are traced out by the respondents, regarding the fixation or otherwise, then all appropriate actions are to be initiated to recover the financial loss caused to the respondent Board and initiate departmental disciplinary proceedings against the erred officials, who all are responsible and accountable for such financial loss to the Board.

18. With the above directions, these writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George, Chennai-600 009.

2.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk, Chennai-600005.

3.The Secretary cum General Manager,
Tamil Nadu Water Supply and Drainage Board (TWAD),
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Tamil Nadu Water Supply and Drainage Board,
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Medical College Road, Thanjavur.

6.The Principal Accountant General Audit-II,
O/o.The Principal Accountant General Audit-II,
Lekha Pariksha Bhavan,
361, Annasalai, Chennai-600 018.

+1 CC to M/s.F. DEEPAK, Advocate (SR-22432[F] dated 29/04/2022)

+1 CC to M/s.K. BALAKRISHNAN, Advocate (SR-22421[F] dated 29/04/2022)

+1 CC to M/s.B. VIJAY KARTHIKEYAN, Advocate (SR-22480[F] dated 29/04/2022)

+1 CC to M/s.SPL. GP (SR-23016,SR-23013[F] dated 29/04/2022)

W.P.(MD) Nos.16315 & 8354 of 2019
and 20992 of 2021
28.04.2022

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