



W.P(MD)No.11945 of 2014

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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Orders reserved on  
11.08.2022

Orders pronounced on  
18.08.2022

**CORAM**

**THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN**

**W.P(MD)No.11945 of 2014**  
**and**  
**M.P(MD)No.1 of 2014**

M.Praveena

... Petitioner

Vs.

1.The Secretary to Government,  
Finance (Pay Cell) Department,  
Secretariat,  
Chennai.

2.The Additional Director of Agriculture,  
Office of the Director of Agriculture,  
Chennai - 5.

3.The Assistant Executive Engineer (Agriculture Engineer),  
Lalgudi,  
Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent pertaining to its order bearing A/921/14(2), dated 29.05.2014 and the consequential order bearing A/921/14(2), dated 29.05.2014 and quash the same and consequently direct the respondents to pay the salary to the petitioner as per the scale fixed by the second respondent by its proceedings No.A Ne Pe 3/148888/2012, dated 27.03.2013.



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For Petitioner : Mr.S.C.Herold Singh  
For Respondents : Mr.D.Gandhiraj  
Government Advocate

**ORDER**

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the third respondent pertaining to its order bearing No.A/921/14(2), dated 29.05.2014 and the consequential order bearing A/921/14(2), dated 29.05.2014 and consequently direct the respondents to pay the salary to the petitioner as per the scale fixed by the second respondent by its proceedings No.A Ne Pe 3/148888/2012, dated 27.03.2013.

2. Learned counsel appearing for the petitioner submitted that the petitioner appeared for examination conducted by Tamil Nadu Public Service Commission for recruitment to Group IV category service. She was called for certificate verification and was allotted to the Revenue Department, Tanjore, during the counseling held on 12.12.2012. Then, she was directed to appear before TNPSC on 26.02.2013 saying that more candidates were allotted to the



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Revenue Department and therefore, she could not be accommodated. In the second counseling, she was allotted to the Agricultural Department. The second respondent allotted her to the Executive Engineer (Agricultural Engineering), Trichy for posting her as Typist in the pay band of Rs.5,200 - 20,200/- with grade pay of Rs.2,400/-. She was posted as Typist in the office of the Assistant Executive Engineer (Agriculture Department), Lalgudi, by communication, dated 09.04.2013 and she joined duty on 12.04.2013. At the time of joining, her pay was fixed at Rs.8,060/- by granting her two advance increments for possessing Graduate qualification as per G.O.Ms.No.321, Finance (Pay Cell) Department, dated 02.07.1998. subsequently, on the basis of audit objection, her pay was reduced on the ground that as per G.O.Ms.No.241, Finance (Pay Cell) Department, dated 22.07.2013, the scheme of granting two advance increments for graduate qualification was withdrawn from 01.04.2013 and recovery was ordered. Therefore, this Writ Petition is filed.

3. It is further submitted by the learned counsel appearing for the petitioner that though the petitioner was selected even in the year 2012 and allotted in the Revenue Department, she could not be accommodated for the reason that there was no vacancy in the



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Revenue Department. Subsequently, she was allotted to the Agricultural Engineering Department and she joined the service on 12.04.2013. Allotting the petitioner to the Revenue Department, then again to the Agricultural Engineering Department are due to administrative reasons. Had the petitioner been given posting in the Revenue Department or at least she was allotted to the Agricultural Engineering Department or for that matter any other Department, immediately after certificate verification under selection she would have been appointed much prior to 12.04.2013 ie., the date of her appointment. Advance increment to graduate qualification was discontinued only from 01.04.2013. For the administrative mishandling and delay caused by the respondents, the petitioner should not be penalised and denied the advance increments due to her. Thus, he prayed for setting aside the impugned orders and directing the petitioner to pay salary to the petitioner as per the scale fixed by the second respondent by its proceedings No.A.Ne.Pe. 3/148888/2012, dated 27.03.2013.

4. In response to the submissions made by the learned counsel appearing for the petitioner, learned Special Government Pleader appearing for the respondents submitted that individuals with graduate qualifications appointed as Junior Assistants / Typists



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in Government service were granted two advance increments, as per G.O.Ms.No.321, Finance (Pay Cell) Department, dated 02.07.1998 read with clarification in Government Letter No.34124, Finance (Pay Cell) Department, dated 26.06.2009. The Government examined the scope of continuing the grant of two advance increments and decided to discontinue the grant of two advance increments taking into account the present circumstances where completion of graduation has become a norm and therefore, it is no longer necessary to give advance increments. G.O.Ms.No. 241, Finance (Pay Cell) Department, dated 22.07.2013 is issued in this regard. The petitioner joined duty only on 12.04.2013 afternoon. In the meanwhile, G.O.Ms.No.241, Finance (Pay Cell) Department, dated 22.07.2013 had come into effect from 01.04.2013. Therefore, the advance increments granted to the petitioner was rightly cancelled and recovery ordered. There was no delay on the part of the Administration to give an appointment order to the petitioner. Whatever the delay, it is only a reasonable delay and it cannot be considered as an inordinate delay. Thus, he prayed for dismissal of this Writ Petition.

5. Learned Special Government Pleader appearing for the respondents pressed into service the following Judgments:-



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"(i) In **Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others** reported in **(2012) 8 SCC 117**.

**(ii) State of Punjab and others Vs. Rafiq Masih (Whitewasher)** reported in **(2014) 8 SCC 883."**

6. In **Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others** reported in **(2012) 8 SCC 117**, wherein the Honourable Supreme Court held as follows:-

*"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in*



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*many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."*

7. Same proposition is reiterated in the Judgment reported in ***State of Punjab and others Vs. Rafiq Masih (Whitewasher)*** reported in **(2014) 8 SCC 883**.

8. Considered the rival submissions and perused the records.

9. It is seen from the records produced and the submissions made by the learned counsel appearing for the parties that the petitioner was called for counselling on 06.12.2012 and by the proceedings in Memo No.7027/PSD-B2/2010, dated 06.12.2012, she was allotted to the Revenue Department, Thanjavur. As stated by the petitioner, she could not be accommodated in the Revenue Department for the reason that more candidates were allotted to



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the Revenue Department, in excess of the vacancy available. Then, she attended second counseling on 26.02.2013 and she was allotted to the Agricultural Department by Memo No.7027/PSD-B2/2010, dated 06.12.2012. On 27.03.2013, through proceedings in No.A.Ne.P2/148888/2012, the Director of Agriculture, Chennai, issued proceedings to the petitioner that she was allotted to the Agricultural Department. On 03.04.2013, through proceedings in Se.Mu.No.A.Pa2/7926/2013, issued by the Chief Engineer, Agricultural Engineering Department, the petitioner and others were informed about their appointments and allotment to Executive Engineer, Agricultural Engineering Department. On 09.04.2013, she was issued an appointment order appointing her as a Typist in Assistant Executive Engineer, Lalgudi. The petitioner joined the service on 12.04.2013. Her pay was fixed at the higher grade pay at Rs.5,660 + Rs.2,400/- G.P + 80 S.P for possessing B.A Degree, through proceedings in No.A/623/13, dated 23.04.2013.

10. The sequence of the events as narrated above would show that the petitioner was selected and allotted to the Revenue Department as early as on 12.12.2012. Due to the lack of vacancy in the Revenue Department and other Administrative delay, she was accommodated in Agricultural Engineering Department and was



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appointed only on 09.04.2013. She was granted two advance increments for possessing B.A Degree as per G.O.Ms.No.321, Finance (Pay Cell) Department, dated 02.07.1998. Through G.O.Ms.No.241, Finance (Pay Cell) Department, dated 22.07.2013, the Government took note of the pay anomaly between Junior Assistants / Typists and Records Clerks with S.S.L.C qualification and Assistants directly appointed, in view of grant of two advance increments to Junior Assistants / Typists with graduation. Finding that in the present scenario where most of the recruits are Degree holders and even have Post Graduation / Professional qualification, decided to discontinue the grant for higher start of pay to the Junior Assistants / Typists for possessing Degree qualification. It was also decided to give "Personal Pay" to directly recruited Assistants / Accountants and orders dispensation of higher start of pay to the Junior Assistants / Typists and Record Clerks and shall also to take effect from 01.04.2013. It is also mentioned in the order that in cases where higher start of pay has already been granted between 01.04.2013 and the date of issue of order, in such cases need not be effected any recovery.



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11. In the case beforehand, the petitioner's pay was fixed on 23.04.2013 with a higher start of pay. G.O.Ms.No.241, Finance (Pay Cell) Department was issued on 22.07.2013. As per this G.O, recovery could not be made from the petitioner.

12. That apart, learned counsel appearing for the petitioner brought to the notice of this Court in the order passed by the Tahsildar, Valajabath in proceedings in Na.Ka.No.546/2019/V1 that one Raghu and two others filed a Writ Petition in W.P.No.30012 of 2013 challenging the order of recovery. Even while this Writ Petition was pending, an order was passed that advance increments cannot be denied to a Typist with Degree qualification merely because there was delay in giving appointment order due to administrative reasons. It is also referred to in the additional counter-affidavit filed by the first respondent. As detailed above, though the petitioner was selected in the year 2012 and allotted to the Revenue Department in counseling held on 12.12.2012, she could not be accommodated for the reason that there was no vacancy. Had the Government allotted the petitioner to the Department where vacancy is available, she would have been appointed in the year 2012 itself. She was allotted to the Agricultural Engineering



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Department in the second counseling, dated 26.02.2013. However, she was not immediately given an appointment order. The appointment order was given only on 09.04.2013.\_These things had happened because of ill planning by the Government and the delay in giving appointment order to the petitioner by the Government. For the delay caused by the Government in giving appointment order to the petitioner, her rightful claim of two advance increments as per G.O.Ms.No.321, Finance (Pay Cell) Department, dated 02.07.1998 cannot be denied. In fact, the petitioner was granted two advance increments on the basis of this G.O, which was subsequently taken away and recovery was ordered. This action of the Government, in the considered view of this Court, is not in accordance with law. The petitioner is entitled to the benefit of two advance increments as per G.O.Ms.No.321, Finance (Pay Cell) Department, dated 02.07.1998 and continue to have this increment.

13. The Judgment relied on by the learned Special Government Pleader appearing for the respondents in ***Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others*** reported in ***(2012) 8 SCC 117***, it was observed that excess payment made to the petitioner can be recovered. No doubt that excess payment made to the employee can be recovered, if it is



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wrongly paid. In the case beforehand, this Court finds that the petitioner is rightfully entitled for two advance increments. Therefore, the payment made to her cannot be considered as excess payment. Therefore, this Court is of the considered view that this Judgment relied on by the learned Special Government Pleader appearing for the respondents is not applicable to the facts and circumstances of this case.

14. In the result,

"This Writ Petition is allowed by setting aside the order passed by the third respondent, dated 29.05.2014 and the consequential order, dated 29.05.2014 and the respondents are directed to pay the salary to the petitioner as per the scale fixed by the second respondent by proceedings in No.A.Ne.Pe 3/148888/2012, dated 27.03.2013."

There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**18.08.2022**

Internet :Yes  
Index :Yes / No  
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**Note:-**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Presiding Officer,  
Labour Court,  
Tirunelveli,  
Tirunelveli District.
- 2.The Labour Officer,  
Tirunelveli,  
Tirunelveli District.



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**G.CHANDRASEKHARAN, J.**

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Order made in  
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