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W.P.No.1122 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.Nos.1122, 1905, 1941, 1953, 1923, 1945, 1947, 1951, 1917, 1932, 1920,
1939, 1911, 1913, 1908, 1929, 1927, 1935, 4036, 4070, 4073, 4076, 4058,
4064, 4061, 4066, 4037, 4038, 4050, 4047, 4044, 4041, 4039, 4054, 4045,
4048, 4051, 4052, 4056, 4059, 4077, 4078, 4079, 4080, 4081, 4082, 4108,
4110, 4120, 4121, 4130, 4131, 4135, 4138, 4139, , 4143, 4145, 4148, 4149,
4152, 4154, 4157, 4158, 4161 of 2020

and

W.M.P.Nos.1354, 2230, 2271, 2293, 2249, 2276, 2282, 2288, 2243, 2258,
2245, 2267, 2236, 2239, 2232, 2255, 2254, 2262, 4811, 4814, 4820, 4763,
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4907, 4909, 4917, 4918, 4919 & 4921 of 2020

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1.M.Santha

D/o.G.Munusamy

38/68, Flat "E", Sahithya Apartment

Panchali Amman Kovil Street

Arumbakkam, Chennai

2.P.Usha

D/o.P.V.Paul



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No.6/9, TNGO Colony 1st Street
Adambakkam
Chennai

3.N.Mangayarkarasi
D/o.M.Natesan
71, Appasamy Street
Chetpet, Chennai

4.C.P.Baskaran
S/o.C.Peter
96, Appasamy Street
Chetpet, Chennai

... Petitioners

/Vs/

The Joint Director (Employment)
O/o.Director of Employment and Training
Guindy, Chennai 600 032

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order of the Respondent in செயல்முறை ஆணைகள் எண்.ஓவி1/625/2018 dated 28.11.2019 and quash the same.

For Petitioners : Mr.J.Pooventhera Rajan

For Respondents : Mr.Haja Nazrudeen
Additional Advocate General I
Assisted by
Mr.P.Sanjai Gandhi
Government Advocate



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COMMON ORDER

W.P. No.1122 of 2020 has been filed for issuance of Writ of Certiorari to call for the records pertaining to the impugned order of the Respondent in செயல்முறை ஆணைகள் எண்.ஓவி1/625/2018 dated 28.11.2019 and quash the same.

2.The Petitioners have filed these Writ Petitions seeking to quash the respective impugned orders, which cancels the special grade pay given to the Petitioners and to recover the grade pay paid to these Petitioners from the year 2014.

3.The Petitioners were originally staff of Khadi Board. Since 375 staff in Khadi Board were excessive, a decision was taken to retrench them. The Government has taken proactive measures and issued G.O.(Ms)No.154 (Handloom, handicrafts, Textiles and Khadi (F2) Department) dated 21.11.2009 by framing guidelines for absorption of excess staff from Khadi to other Government Departments. However, while issuing G.O.(Ms)No.154 (Handloom, handicrafts, Textiles and Khadi (F2) Department) dated



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21.11.2009, it was made clear that the persons so absorbed in other

Government Departments will be considered as new appointees and they will not get service benefits, however, they are entitled only for pay protection. But the benefit of said G.O., is not applicable to those who volunteered to retire under Voluntary Retirement Scheme. Subsequently G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012 has been issued by considering their past services with the Khadi Board to be included for their pensionary benefits. In terms of G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012, the number of years of service of the Petitioners will be taken into account only for the purpose of pension and for awarding them any selection grade or special grade pay.

4.Heard Mr.J.Pooventhera Rajan, learned counsel for the Petitioner and Mr.Haja Nazrudeen, learned Additional Advocate General-I for the Respondent.

5.Mr.J.Pooventhera Rajan, learned counsel for the Petitioner submitted that as per G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012, the Government has not only come forward to give pay protection but also service protection. If the Government provides



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service protection that includes all the benefits that would arise out of the service of the Petitioners. In fact, most of the Petitioners were working as Junior Assistant in Commercial Tax Department and the Petitioner is W.P.No.1905 of 2021 was working in Labour and Employment Department.

6.Mr.J.Pooventhera Rajan, learned counsel for the Petitioner relied upon judgment of the Hon'ble Apex Court in *State of Punjab and others Vs. Rafiq Masih (White Washer)* reported in (2015) 4 Supreme Court Cases 334, wherein it is held that recovery is not permissible from any person belonging to Class III and Class IV Service (Group C and D service) and submitted that in the present case, all the Petitioners are belonging to Class III and Class IV and all are retired from service and hence recovery should not be made after the period of five years. The learned counsel for the Petitioner further submitted that similarly placed persons have already approached this Court in W.P.(MD).No.4976 of 2020, wherein this Court by order dated 10.01.2023, by invoking "*White Washer's*" case quashed the impugned order and allowed that Writ Petition.

7.The Petitioners make their claim by having grip only on G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department)



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dated 12.07.2012. In the said G.O., the Government has dealt about the impact

of G.O.(Ms)No.154 (Handloom, handicrafts, Textiles and Khadi (F2)

Department) dated 21.11.2009, in which pay protection has been given and

service protection was denied. In the subsequent G.O.(Ms)No.152 (Handloom,

handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012, the above

denial was considered in view of various representations made by various

associations and service protection has also been extended.

8.Mr.Haja Nazrudeen, learned Additional Advocate General-I submitted that the Petitioners cannot presume service protection benefits under G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012, and such an understanding is beyond the scope of the G.O. According to the submission made by the Government Respondent, the service protection would only mean that those services which were rendered by the Petitioners and like others in Khadi Board are countable for the purpose of computing the eligible services for the purpose of pension and not for any other benefits.

9.Had the Government was consciously restricted the service protection only in respect of pensionary benefits and for counting past services with



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regard to eligible number of years of services, the G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012 could not have employed the word service protection. When there is explicit mention that the G.O. has been issued just to give service protection also for the employees, it goes without saying that service protection would include all other benefits which is known to government service.

10.The impugned order itself stated that grant of increment and special grade pay to the Petitioners with effect from 2012 was a mistake and hence it has to be stopped from the date of the respective impugned proceedings and further the monetary benefits in terms of above increment and grade pay which have already been given to the Petitioners should be recovered.

11.It is the submission of Mr.Haja Nazrudeen, learned Additional Advocate General-I that if any excess payment made due to the negligence, carelessness, collusion, favouritism, etc., or due to fraud, misrepresentation to the employees, the amount so paid to them is bound to be recovered. There cannot be no disagreement on the point that the public money is tax payers' money and if it is misused in the above manner, that is liable to be recovered and there cannot be any justification to stop recovering such payments.



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12.However, in the case on hand, the Petitioners, who have got the monetary benefits in terms of increment and special grade pay did not play any fraud or misrepresentation for getting those benefits. The Government has issued G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012 and the authorities had acted upon it and only by virtue of Government Order, the monetary benefits have been given to the Petitioners. Hence, the judgment of the Hon'ble Supreme Court held in *Chandi Prasad Uniyal and others Vs. State of Uttarkhand* and others reported in (2012) 8 Supreme Court Cases 417 is not applicable to the situation involved in this case.

13.Mr.J.Pooventhera Rajan, learned counsel for the Petitioner brought to the notice of this Court that earlier orders were passed by this Court for similarly placed person, who filed W.P.(MD)No.7823 of 2018. The relevant portion is extracted as under:

“2.The Hon'ble Supreme Court, in the case of State of Punjab & Others vs. Rafiq Masih (White Washer) reported in AIR 2015 SC 696, had held that excess payment wrongly made by the Department to the employee, who belongs to Group-C and Group-D, is impermissible in law. If that be the legal position,



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the present impugned orders, alleging that the scale of pay of the petitioners were wrongfully fixed and excess payments have been made, cannot be sustained. Furthermore, it is not in dispute that the petitioners herein, who were serving as Office Assistants, belong to Group-D category and therefore, by applying the ratio laid down in the White Washer's case (supra), such re-fixation and the consequential recovery under the impugned order, cannot be sustained.

3. Accordingly, the impugned proceedings of the first respondent dated 19.12.2017 and the consequential impugned order of the third respondent dated 15.03.2018 are quashed.

4. This Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.”

14. In yet another case in *C. Vijayalakshmi Vs. The Joint Commissioner (ST) Chennai South Division (W.P.(MD).No.4967 of 2020)*, the Madurai Bench of this Court has held as under:

“9. In the decision of the Hon’ble Supreme Court rendered in the case of State of Punjab and others Vs. Rafik Masih (White Washer) and others reported in 2015(4) SCC-334 and referred paragraph No.12, wherein, it was held as follows :

“12. 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



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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:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) 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.*
- (iv) 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.*
- (v) 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."*

10. In view of the settled proposition of law laid down by the Hon'ble Apex Court, the Recovery proceedings, initiated by the respondents is not sustainable, and accordingly, the present impugned order is quashed."

15.Mr.J.Pooventhera Rajan, learned counsel for the Petitioner cited the



decision rendered in “*White Washers*” case to canvas his point that the stipulation made in *White Washers* case is applicable to the Petitioners and even for the sake argument, if the payment made to the Petitioners are considered excess, it cannot be recovered. In paragraph 12 of the *White Washers* case the following summary has been given:

“12. 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:

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

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) 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.

(iv) 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.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or



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arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

16.No doubt, the Petitioner who are working as Junior Assistants would fall under Class IV employees and some of them had retired from service and the recovery is sought to be made after five years. So the conditions (i) to (iii) are squarely applicable to facts of the case. However, in the case on hand, it is not excess payment but the payment due to be paid to the Petitioners, and hence it cannot even be considered as excess payment and hence no need to give the concession.

17.Because there is a conceivable difference between concession and entitlement. The 'entitlement' represents a right which can be exercised or claimed and the concession in a relaxation or liberty given by someone at his discretion, and hence the receiver cannot have any control or claim over concession. What is being enjoyed by the Petitioners are only entitlement derived from G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012. Hence the impugned order issued for recovery of the payment already made and to stop making further payment is due to misinterpretation and misunderstanding of the scope of the above Government



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18.In view of the above stated reasons, the impugned orders in the respect Writ Petitions are set aside and these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.11.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
sai

To

The Joint Director (Employment)
O/o.Director of Employment and Training
Guindy, Chennai 600 032



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R.N.MANJULA, J.

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