IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.No.1471 of 2013

The Tamil Nadu Industrial Investment
Corporation Limited,
Rep. by its Managing Director,
No.692, Anna Salai,
Nandanam, Chennai – 600 035. ... Appellant

vs

1.S.Kirubanidhi
2.K.Sukumar
3.P.Murugesan
4.P.Selvaraj
5.S.Rajagopal
6.V.Natarajan
7.R.Gunasekaran
8.V.P.Dinakar
9.M.Muthukrishnan
10.S.Govindasaminathan
11.Muralidharan
12.The State of Tamil Nadu rep. by its
Secretary to Government,
Small Industries Department,
Fort St.George, Chennai – 600 009.

13.The Secretary to Government,
Industries Department,
Fort St.George, Chennai – 9. ... Respondents

Prayer: Appeal under Clause 15 of the Letters Patent, to set aside the order made in W.P.No.24229 of 2002 dated 26.02.2013 and consequently dismiss the writ petition filed by the respondent with costs.

For Appellant : Mr.S.Silambanan
Additional Advocate General
assisted by Mr.K.Magesh

For Respondent

For RR1 & 7 : Not ready in notice

For RR 2, 4, 5 & 11 : No appearance

For RR 3, 6, 8, 9 & 10 : No appearance

For RR12 & 13 : Mr.P.Anandakumar
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

The appellant / third respondent has preferred this appeal as against the final order passed in W.P.No.24229 of 2002, allowing the writ petition and to pass a direction to refund the principal amount recovered from the petitioner.

Brief facts of the case:-

2.1. Respondents 1 to 11 were working as Senior Regional Managers in the appellant / Corporation, namely, the Tamil Nadu Industrial Investment Corporation Limited (hereinafter called as TIICL). The TIICL is providing financial assistance for starting small and medium scale industries and also providing loans for purchase of transport vehicles and trawlers in the State of Tamil Nadu and Pondicherry. TIICL is sponsored by the Government of Tamil Nadu and the Government of Tamil Nadu holds 48% of the share. While so, pursuant to the V Pay Commission, the TIICL Staff Welfare Association requested the appellant to revise the pay scales of its employees. The Board of TIICL forwarded the said proposal to the Finance Department. Since no action has been taken by TIICL, the TIICL Staff Association filed a writ petition in W.P.No.15213 of 1989 to implement the decisions taken by the Board, in its meeting held on 08.09.1989 and the same was dismissed on 19.03.1990. Challenging the same, they filed writ appeal in W.A.No.216 of 1991 and the same was also dismissed on 11.03.1991.

2.2. Thereafter, TIICL has resolved to approve the revised scales of pay applicable to the posts namely, General Manager, Deputy General Manager, Assistant General Manager, Manager and Assistant Manager, effecting from 01.06.1988 with monetary benefit from 01.01.1993. Accordingly, the scale of pay have been revised. G.O.Ms.No.811, Industries Department, dated 07.08.1990 has fixed the scale of pay on par with the Government Employees in respect of the above said posts. Therefore, TIICL was directed to effect recovery of excess payment. Against the said order, 87 officials of TIICL filed W.P.No.1035 of 1997 and the same was admitted and interim orders were granted. Thereafter, the said interim orders were vacated and the writ appeal filed against the said order itself was also dismissed on 20.10.2003. Aggrieved by the same, the respondents 1 to 11 filed writ petition in W.P.No.24229 of 2002 and the same was allowed by this Court on 26.02.2013. Aggrieved by the same, the appellant TIICL has filed the present appeal.

3. The learned counsel for the appellant / third respondent submitted that the respondents 1 to 11 / writ petitioners herein filed a writ petition in W.P.No.1035 of 1997 stating that the Government of Tamil Nadu in the Letter No.811 of the Industries Department, dated 07.08.1990, approved the following scales of pay for the post as indicated in the said Government order:

Sl. No.	*Posts*	*Scale of pay*
1.	General Manager	Rs.5100-150-5700-200-6300
2.	Deputy General Manager	Rs.4500-150-5700
3.	Assistant General Manager	Rs.4250-135-5060-150-5510
4.	Manager	Rs.4100-125-4850-150-5300
5.	Assistant Manager	Rs.3000-100-3500-125-4500

4. The Board of Corporation, in its meeting held on 19.04.1994, had resolved to approve the revised scales of pay to the above said posts with effect from 01.06.1988 with monetary benefits from 01.01.1993. Accordingly, the basic pay for all the above said officials in the cadres were revised as resolved by the Board. Subsequently, the Government of Tamil Nadu, by its Letter No.4919/SID/95-8, Small Industries (SID) Department,

dated 18.11.1996, had issued instructions to the appellant / Corporation to adopt the following scales of pay, which were approved, vide Letter No.811, Industries Department, dated 07.08.1990.

Sl. No.	***Posts***	***Revised Scale of pay***
1.	General Manager	Rs.4500-150-5700
2.	Deputy General Manager	Rs.4100-125-4850-150-5300
3.	Assistant General Manager	Rs.3700-125-4700-150-5000
4.	Manager	Rs.3000-100-3500-125-4500
5.	Assistant Manager	Rs.2500-75-3100-100-4200

5. Pursuant to the aforesaid revised scales of pay, appropriate instructions were issued to draw and disburse salary to the officials in the above categories as per the relevant pay Rules of the Corporation on the basis of revised scale of pay now fixed by Government with effect from 01.01.1997 and also to indicate the excess amount already paid for the period from 01.01.1993 to 31.12.1996, and the same is directed to be recovered from the concerned employees. Aforesaid communication dated 18.11.1996 was challenged in W.P.No.1035 of 1997. After the arguments advanced by both the parties, the said writ petition came to be dismissed on 20.10.2003 by this Court and challenging the said dismissal order passed by this Court, the employees had preferred an appeal in W.A.No.1473 of 1997

as against the said writ petition and the same was also dismissed on 28.04.1998.

6. The learned counsel for the appellant / Corporation submitted that in the aforesaid order passed, the power of the authority had been confirmed for taking necessary action for recovering the revised scale of pay and also for recovering the said amount from the employees. Thereafter, the respondents 12 and 13 initiated steps to recover the excess amount from the writ petitioners, as per the revised scale of pay and that was only challenged in the present W.P.No.24229 of 2002, which came to be allowed by this Court on 26.02.2013 and that is the order which is under challenge in this appeal.

7. According to the learned counsel for the appellant / Corporation the writ Court has wrongly relied on a decision reported in ***(2009) 3 SCC 475*** in the case of ***Syed Abdul Qadir and Others Vs. State of Bihar and Others***, in which, the Hon'ble Supreme Court of India has held that if any excess amount has not been paid on account of misrepresentation and fraud

on the part of the employee, no recovery can be made from the said employee.

8. The learned counsel appearing for the appellant / Corporation has also relied upon the judgment of the Hon'ble Supreme Court of India reported in ***(2015) 4 SCC 334*** in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others***. It is useful to rely upon the relevant paragraph No.18 in the above said judgment, in which, appropriate orders have been passed, which reads as follows;-

> *" 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and*

Group D service).

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

(iii) Recovery from the 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 case 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."

9. According to the appellant / Corporation, the respondents 12 and 13 have initiated the proceedings for recovery of excess amount from the respondents / writ petitioners within a period of five years, vide proceedings

dated 24.01.1997. The respondents 1 to 11 / employees have challenged the Government Order in Letter No.4949/SID/95-8 dated 18.11.1996 and consequently, recovery order has been passed in proceedings in Admn/A1/15079/96 dated 20.01.1997, which has been challenged in W.P.No.1035 of 1997 by questioning the power of the respondents 12 and 13 herein to revise the scale of pay.

10. According to the appellant / Corporation, the aforesaid proceedings have been initiated within a period of five years. Therefore, according to them, the period cited in the above said judgment in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others*** in paragraph No.18, in Clause III, recovery should not be made from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

11. On the facts of this case is concerned, they have initiated recovery proceedings within a period of five years. Thus, according to the learned counsel appearing for the appellant, the impugned order in the writ petition

is therefore perfectly within the legal parameters of the decision taken by the Hon'ble Supreme Court. The aforesaid decision has been rendered by the Hon'ble Supreme Court in the year 2015. Therefore, in the light of the aforesaid decision of the Hon'ble Supreme Court, the power is granted to the respondents 12 and 13 to recover the said amount from the employees.

12. We have also heard the arguments of the learned Additional Government Pleader appearing for the respondents 12 and 13 and perused the aforesaid decision of the Hon'ble Supreme Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (While Washer) and Others.***

13. In the light of the guidelines and parameters laid down by the Hon'ble Supreme Court, pointing out few circumstances where recovery from the employees would be impermissible in law, the respondents 1 to 11 / employees will not come under the said parameters for entitlement of the relief of refund of the said amount, which has been already paid to the appellant / Corporation. In such circumstances, the impugned order passed by the learned single Judge of this Court is liable to be set aside.

14. Accordingly, the writ appeal stands allowed and the impugned order passed by this Court in W.P.No.24229 of 2002 dated 26.02.2013 is hereby set aside. There shall be no as to costs.

(D.K.K.J.) **(K.G.T.J.)**

13.03.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking / Non- Speaking order

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To

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