



W.A.No.1882 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.1882 of 2021
and
C.M.P.No.12000 of 2021**

- 1.The Government of Tamil Nadu,
Rep. by the Secretary to the Government,
Finance (Pay Cell) Department,
Fort St. George, Chennai - 600 009.
- 2.The Secretary to the Government,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 600 009.
- 3.The Director of School Education,
College Road, Chennai - 600 006.
- 4.The Chief Educational Officer,
Villupuram District,
Villupuram.
- 5.The District Educational Officer,
Villupuram District, Villupuram.
- 6.The Headmaster,
Government Boys Higher Secondary School,
Thiyagathurugam,
Kallakurichi Taluk,
Villupuram District.

... Appellants

Vs.

N.Srinivasan

... Respondent



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Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 25.10.2019 passed by the learned Judge in W.P.No.12000 of 2013.

For Appellants : Mr.C.Kathiravan
Special Government Pleader

For Respondent : Mr.R.Saseetharan

JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

This writ appeal has been filed by the appellants/State as against the order dated 25.10.2019 passed by the learned Judge in W.P.No.12000 of 2013.

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

2.1. The respondent herein was initially appointed as Vocational Instructor in Electrical Motor Rewinding on 21.07.1996 on double part time basis in the Government Boys Higher Secondary School, Thiagathurugam, Kallakurichi Taluk, Villupuram District. Subsequently, he was appointed as Vocational Instructor Grade II in the regular time scale of pay of Rs.1200-2040 from 05.10.1996 by order dated 26.02.1998 and his services were regularized in the post of Grade I Vocational Instructor with effect from 05.10.1996. By proceedings dated 02.09.2008, he was granted Selection Grade scale of pay in the post of



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Vocational Instructor from 05.10.2006 and his pay was fixed in the scale of pay of Rs.6500-10500 which is the selection grade scale of pay for the post of B.T. Assistant as per the recommendations of the Official Pay Committee which has been introduced with effect from 01.01.1996.

2.2. While so, the Government by G.O.Ms.No.6 dated 04.01.2000, has framed *ad hoc* rules for the post of Vocational Instructors for various subjects in Higher Secondary Schools under Article 309 of the Constitution of India. In the said rules, it was stated that the General and Special Rules applicable to the holders of permanent post in Tamil Nadu School Educational Subordinate Services, shall apply to the Vocational Instructors like that of the respondent herein, for Higher Secondary School. That apart, the Government, by G.O.Ms.No.234 dated 01.06.2009, has introduced revised scale of pay to its employees as per the recommendations of the Official Pay Committee constituted by them. In the said Government Order, the system of pay band with grade pay was introduced and the revision of pay scale was introduced with effect from 01.01.2006. By G.O.Ms.No.23 dated 12.01.2011, the scale of pay of B.T. Assistant which is equivalent to Vocational Instructor, was fixed at Rs.9300-34800 with Grade Pay of Rs.4,600/-. It was stated in the G.O. that the revised scale of pay will be given notionally from 01.01.2006 and monetary benefit from 01.01.2011. Thereafter, the Government, considering the request of the employees, by letter dated 08.11.2010, granted Selection and Special Grade scales of pay. For the pay



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band of Rs.9300-34800 with Grade Pay of Rs.4300/-, Rs.15600-39100 + 5400 was granted as Selection Grade scale of pay. Therefore, the Vocational Instructors like that of the respondent herein as in the case of B.T. Assistant, are entitled for the said Selection grade of pay.

2.3. As already stated above, the respondent was granted Selection Grade scale of pay with effect from 05.10.2006 as per the proceedings of the fourth appellant dated 02.09.2008 and he was fixed with selection grade scale of pay of Rs.15600-39100 + Rs.5400/- GP, by the proceedings dated 14.12.2011 of the sixth appellant herein. It was stated in the said proceedings that if the pay fixation of the respondent is subsequently found incorrect or any audit objection is raised, the individual shall repay the alleged excess in one lumpsum.

2.4. Thereafter, by proceedings dated 20.03.2013, the District Educational Officer sent a copy of the audit objection and directed the sixth appellant viz., Headmaster of the School to comply with the same and submit a report within a period of seven days. It was stated in the audit objection that Grade Pay of Rs.5400/- has been sanctioned incorrectly, instead of Rs.4600/- which resulted in excess payment of Rs.42,960/-. Pursuant to the same, the Headmaster of the School, by proceedings in Na.Ka.No.445/12-13/2013 dated 28.03.2013, has revised the pay of the respondent with effect from 01.01.2006 and fixed his pay in the pay band of Rs.9300-34800 +4600 and ordered recovery of the alleged excess sum of Rs.1,08,444/-.



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2.5. According to the respondent herein, before passing such an order of recovery, neither any notice has been given to him nor any explanation has been called for. It was further stated by him that for the post of B.T. Assistant, the first level promotion is to the post of Headmaster, High School and the post of P.G. Assistant, which carries a scale of pay of Rs.9300-34800 + Rs.4600/-. Therefore, the Vocational Instructors are entitled to get the said scale of pay as Selection Grade scale of pay, but in the audit objection, no reason has been given for revising the scale of pay at lower level. It was also stated by the respondent that no promotional avenues were prescribed for the post of Vocational Instructors in G.O.Ms. No.6, dated 04.01.2000. Thereafter, by G.O.Ms.No.185 dated 25.08.2008, the Government prescribed the post of P.G. Assistant for Vocational Instructor only for Commerce and Business. As on 01.01.2006 and as on date, no promotional avenues are prescribed for Vocational Instructor in Electrical Motor Rewinding like that of the respondent herein. The post of Headmaster, High School is not a promotional avenue for Vocational Instructor in Motor Rewinding. Even though this Court issued a direction to the Government that Vocational Instructor should be considered for the post of Headmaster, High School as in the case of B.T. Assistant, so far, no rules have been prescribed by the Government in this regard. Hence, it cannot be said that there is a promotional avenue for Vocational Instructor and their selection grade should be restricted to ordinary grade pay of first promotional post. The letter dated



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08.11.2010 clearly stated that selection grade scale of pay is applicable to employees who were awarded selection grade / special grade prior to 01.01.2006 and to those employees who exercised their option to fix the pay after the date of selection grade in the revised scale of pay. Since the respondent is the Vocational Instructor in Electrical Motor Rewinding and not under Commerce, he will not come under G.O.Ms.No.185 and he is not entitled for promotion to the post of P.G. Assistant Commerce and therefore, selection grade scale of pay cannot be restricted to the ordinary grade scale of pay of first level promotion. Thus, the respondent is entitled to the scale of pay of Rs.15600-39100 + Rs.5400/- and the sixth appellant has rightly fixed the selection grade scale of pay at Rs.15600-39100 + Rs.5400/-, which cannot be revised by the impugned proceedings dated 28.03.2013. With these averments, the respondent preferred W.P.No.12000 of 2013 for quashing the proceedings of the appellants 5 and 6 with respect to revision of pay and recovery of excess amount and for consequential direction.

2.6. By order dated 25.10.2019, the learned judge disposed of the aforesaid writ petition by setting aside the order for recovery of the excess amount from the pay of the respondent herein from 01.01.2011, on the premise that it is well settled that if excess payment is made by the employer by applying wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, then, when such employees are asked to pay the excess amount, they would be faced



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with hardship, when the amount is sought to be recovered from them and if there was no misrepresentation or fraud by the employee in grant of excess amount of pay, and it should not be recovered.

2.7. Challenging the above order of the learned Judge, the present appeal has been filed by the State.

3.The learned Special Government Pleader appearing for the appellants / State has submitted that the learned Judge has failed to appreciate the fact that the fifth and sixth appellants have passed the orders impugned in the writ petition, on the basis of the Government Orders viz., G.O.Ms.No.263, Finance (Pay Cell) Department, dated 22.07.2013 and G.O.Ms.No.306, Finance (CMPC) Department dated 12.09.2018. Continuing further, the learned counsel submitted that the learned Judge without ascertaining the availability of any Rule or Government Order to sustain the claim of the respondent, has passed the order impugned herein, by merely referring to various judgments of the Hon'ble Supreme Court misinterpreting the principle. It is also submitted that if the order of the learned Judge is implemented, it will set a bad precedent and will open floodgate of litigation all over the State. In support of his contentions, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in ***Chandi Prasad Uniyal v. State of Uttarakhand [(2012) 8 SCC 417]***, wherein it was categorically observed that the Supreme Court has not laid down



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any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular / wrong fixation of pay be recovered. It was specifically stated in the said decision that except few instances viz., ***Syed Abdul Qadir v. State of Bihar [(2009) 3 SCC 475]*** and ***Col. B.J.Akkara v. Govt. of India [(2006) 11 SCC 709]***, the excess payment made due to wrong / irregular pay fixation, can always be recovered. Therefore, the learned counsel sought to allow this writ appeal by setting aside the order of the learned Judge passed in the writ petition.

4.On the other hand, the learned counsel for the respondent reiterating the grounds raised in the writ petition, submitted that the learned Judge has correctly passed the order impugned herein and hence, the same need not be interfered with, by this Court. It is also submitted that the learned Judge passed a common order in the writ petitions filed by the respondent herein (WP.No.12000 of 2013) as well as similarly placed person by name N.Rajendran (WP.No.11999 of 2013); challenging the said common order, the appellants filed two separate appeals viz., WA.Nos.1882 of 2021 and 2168 of 2021; and by judgment dated 02.09.2021, WA.No.2168 of 2021 came to be dismissed by a Division Bench of this court and following the same, the present writ appeal also, will have to be dismissed, according to the learned counsel for the respondent.

5.Heard the learned counsel on either side and also perused the materials



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available on record carefully and meticulously.

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6.The issue involved herein pertains to the payment of excess salary to the respondent, due to wrong fixation of scale of pay. It is the specific stand of the appellants that while fixing the pay of the respondent, it was clearly stated in the order that if the pay fixation is subsequently found incorrect or any audit objection is raised, the individual has to repay the alleged excess payment in one lumpsum; and accordingly, the order of recovery came to be passed against the respondent. However, without analysing the facts of the case in detail, the learned Judge has relied upon the judgments of the Hon'ble Supreme Court, more particularly, in ***Syed Abdul Qadir case*** (cited supra) and disposed of the writ petition, by setting aside the order of recovery passed against the respondent herein. The said order of the learned Judge is questioned in this writ appeal by the appellants/State.

7.At the outset, pertinently, it is to be pointed out that the order of the learned Judge dated 25.10.2019, which is impugned in this writ appeal, is a common order passed in two separate writ petitions viz., WP.No.11999 of 2013 filed by one N.Rajendran and WP.No.12000 of 2013 filed by the respondent herein. Assailing the said common order dated 25.10.2019, the appellants preferred two writ appeals viz., WA.No.2168/2021 (WP.No.11999 of 2013) and



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WA.No.1882 of 2021 (WP.No.12000 of 2013), which is under consideration of this court. Earlier, the first writ appeal bearing no.2168 of 2021 was dismissed, by judgment dated 02.09.2021, the relevant passage of which, is profitably quoted below:

"Though the contention of the learned Government Advocate, appears to be sound at the first blush, a cursory look at the order dated 28/8/2003 shows that admittedly, it is a non speaking order, with regard to wrong fixation of pay to the vocational teachers. In the proceedings of the sixth respondent dated 28.03.2013, it has been simply stated that the pay scale, which is revised as 15600-39100+5400 is hereby cancelled and they have decided to refix the pay scale of 9300-34800+4600. Though the Government is entitled to recover the amount based on the guidelines pronounced by the Apex Court, no speaking order has been passed with respect to recovery of the salary fixed on 14.10.2011 in the Impugned order dated 28.03.2000. Therefore, in the absence of speaking order being passed, we are of the view that the learned Judge was right in holding that there is no fraud or misappropriation on the part of the employee and that, the excess amount paid cannot be recovered.

In view of the same, we find no reason to interfere with the order of the learned Single Judge dated 25.10.2019 made in W.P.No.11999 of 2013 and this Writ Appeal is liable to be dismissed."

It is apparent from the above judgment that the Division Bench has dismissed the writ appeal filed by the appellants, on the premise that the order of the sixth appellant dated 28.03.2013 is a non-speaking order with regard to wrong fixation of pay to the vocational teachers and therefore, the learned Judge was right in holding that there is no fraud or misrepresentation on the part of the employee and that, the excess amount paid, cannot be recovered.

8.In the present case, the very same recovery order dated 28.03.2013 passed by the sixth appellant against the respondent herein, was challenged in



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the writ proceedings, which was also disposed of in his favour, by the learned Judge, by the very same order dated 25.10.2019 passed commonly, which is impugned herein. This court is of the opinion that there cannot be two different orders in the appeals arising out of a common order. Therefore, having regard to the admitted fact that the order of the respondent authorities is a non-speaking order about the wrong fixation of pay; and that, in order to maintain uniformity and judicial discipline, this court, following the earlier order dated 02.09.2021 passed in W.A.No.2168 of 2021 referred to above, is inclined to dismiss the writ appeal.

9.Accordingly, this writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
25.04.2023

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Speaking Order / Non-speaking Order

Internet : Yes.

Index : Yes / No

To

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Rep. by the Secretary to the Government,
Finance (Pay Cell) Department,



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