



W.P.No.38353 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.No.38353 of 2015

and

M.P.Nos.1 and 2 of 2015, W.M.P.No.9116 of 2016

S.Natarajan

... Petitioner

Vs.

- 1.The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai - 600 005.
- 2.The General Manager-cum-Secretary,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai - 600 005.
- 3.The Accounts Officer,
Internal Audit Wing,
Office of the Chief Engineer,
Tamil Nadu Water Supply and
Drainage Board,
First Main Road, Gandhi Nagar,
Vellore - 632 006.



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4.The Superintending Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Vellore and Thiruvannamalai Circle,
Vellore - 632 006.

5.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Rural Water Supply Division,
Aruppamedu Salai,
Gandhi Nagar,
Vellore - 632 006.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order dated 28.03.2013 issued by the fourth respondent vide his proceedings No.A2/667/ko.Special grade/vethiva/vellore/2013 the subsequent order dated 19-12-2013 of the first respondent vide his Letter No.15839/niA/A1/2012 quash the same and further direct the first respondent to restore the Special Grade scale of pay sanctioned to the petitioner with effect from 20-03-2009 onwards.

For Petitioner : Mr. L.Chandra Kumar
assisted by
Ms.G.P.Arivuchudar
for M/s.Law Square

For Respondents : Ms.Dakshayani Reddy
for Ms.Y.Kavitha



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ORDER

The petitioner challenges the order of the respondents dated 19.12.2013 whereby, a direction was given for recovering a sum of Rs.33,488/- and also for re-fixation of his pay, which was wrongfully fixed as Selection Grade Junior Assistant.

2. The admitted case is that the petitioner joined in the services of the Tamil Nadu Water Supply and Drainage (TWAD) Board in 1978 in a technical post. He was appointed as a Helper on 20.03.1989, which post was subsequently re-designated as Assistant Driller. The re-designation took place on 04.12.1997.

3. On completion of ten years of service in the post of Assistant Driller, the petitioner was given a selection grade pay on 20.03.2009. On 25.09.2007, the petitioner was appointed to the post of Junior Assistant and granted pay scale protection instead of pay protection. On 20.09.2009, he was granted Special Grade Junior Assistant.



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4. In 2012, the petitioner sought for appointment as an Assistant and at that time, the Audit took note of the fact that instead of granting the petitioner pay protection, what he had already been granted was pay scale protection. This was sought to be rectified and consequent to the rectification, the impugned order came to be passed.

5. Mr.L.Chandra Kumar, learned counsel appearing for the petitioner would submit that the post of Helper/Assistant Driller on the technical side, is equivalent to that of the post, of Junior Assistant on the administrative side.

6. Ms.Dakshayani Reddy, learned Senior Counsel appearing for Ms.Y.Kavitha would vehemently oppose the same and would state that to the post of Junior Assistant, an Assistant Driller is appointed as "recruitment by transfer" and that the so called equivalence is not the submission based on law. She would point out service law knows of "pay protection" to a person but there is no concept of "pay scale protection".



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7. On the first aspect of recovery of a sum of Rs.33,448/-, I am afraid the respondents are not entitled to recover the same, since the petitioner is no way responsible for the wrong fixation of pay scale. This issue is no longer *res integra* and is covered by a Judgement of the Supreme Court in *State of Punjab and others Vs Rafiq Masih (White Washer) and others*, (2015) 4 SCC 334.

8. The relevant portion is Paragraph 18, which is extracted hereunder:-

"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.



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(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 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."

9. The post is a Group-C post. Therefore, the question of recovery of the amount does not arise and the impugned order insofar as it seeks to recover the amount from the petitioner is set aside.

10. Now turning to the aspect on the pay protection, the post of Assistant Driller and post of Junior Assistant are not on the same level as is clear from the fact that the petitioner was taken as a Junior Assistant by way of "recruitment by transfer".



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11. Ms.Dakshayani Reddy, learned Senior Counsel appearing for the respondents would bring to my notice G.O.Ms.No.210, Personnel and Administrative Reforms Department dated 11.03.1987. The Government had come to a conclusion after the One Man Committee Report that services in the Selection Grade of the lower post may be counted for the Selection Grade in the promoted post, if and only if, the Selection Grade scale of the lower post is identical to the ordinary grade of the higher post.

12. The Selection Grade post of the Assistant Driller is Rs.4,100/- to Rs.6,000/- whereas that of the Junior Assistant is Rs.3,200/- to Rs.4,900/-. The pay scales are not identical and therefore, the petitioner is not entitled to the benefits of the aforesaid Government Order. Consequently, the petitioner cannot claim Selection Grade pay to the post of Junior Assistant till he had completed requisite service in the said post.



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13. It is made clear, the said amount of Rs.33,448/- will not be recovered from the petitioner as he is not to be blamed for the wrong fixation.

14. The Selection Grade pay of the Assistant Driller not being on par with that of the Junior Assistant, the respondents shall re-fix the pay of the petitioner, at the same time, protecting his higher pay that he was drawing as an Assistant Driller.

15. With the above directions, this Writ Petition is partly allowed.
No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes / No

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V.LAKSHMINARAYANAN, J.



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