



W.P.No.20877 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.20877 of 2018
and
W.M.P.No.24509 of 2018

D.Mala

...Petitioner

-Vs-

1.The Government of Tamil Nadu,
Rep. by the Secretary to Government,
Finance (Pay Cell) Department,
Fort St. George, Chennai - 600 009.

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai - 600 003.

3.The Zonal Officer,
Zone-8, Revenue Division,
Corporation of Chennai,
Chennai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the third respondent in Order No Ma.Aa.8 Va Thu Na Ka No.R1/2337/2017 dated 14.12.2017, quash the same and



W.P.No.20877 of 2018

direct the respondents to restore the petitioner's fixation of pay as made prior to the said order and grant the petitioner all attendant benefits.

For Petitioner : Mr.T.N.Sugesh
For R1 : Mr.D.Gopal,
Government Advocate
For R2 & R3 : Mr.G.T.Subramanian

ORDER

Heard Mr.T.N.Sugesh, learned counsel for the petitioner, Mr.D.Gopal, learned Government Advocate appearing for the first respondent and Mr.G.T.Subramanian, learned Standing Counsel appearing for the second and third respondents.

2. The petitioner herein was initially appointed as a Road Worker in the Chennai Corporation on 28.03.2008. In the year 2011, the petitioner had passed S.S.L.C. On 10.10.2012, he was promoted to the post of Record Clerk. While serving in this promotional post, his pay was fixed by granting higher start of pay by two stages at the time of her appointment to the post of Record Clerk, in view of the qualification in S.S.L.C and as ordered by the Government in G.O.Ms.No.321, Finance (Pay Cell) Department, dated



W.P.No.20877 of 2018

02.07.1998. After 5 years, the third respondent had passed the impugned order dated 14.12.2017, by stating that the higher start of pay by two stages could be granted only to direct recruits and not to promotees and in view of the audit objections, an excess payment of Rs.62,017/- was sought to be recovered. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner predominantly raised two grounds challenging the impugned order. Firstly, he would submit that G.O.Ms.No.321, dated 02.07.1998, does not differentiate the promotees and the direct recruits, for the purpose of grant of higher start of pay by two stages and therefore, the very basis of the audit objections is flawed. Secondly, he submitted that since the excess payment was made owing to the mistake of the department, which is over and above 5 years, recovery of the same is impermissible, in view of the law laid down by the the Hon'ble Supreme Court in the case of *State of Punjab Vs. Rafiq Masih (White Washer)* reported in *(2015) 4 SCC 334*.

4. Per contra, the learned Standing Counsel appearing for the Chennai Corporation submitted that the impugned order is only an implementation of



W.P.No.20877 of 2018

the audit objections raised and therefore, the Corporation cannot be found fault with.

5. The learned Government Advocate for the first respondent submitted that G.O.Ms.No.321 would be applicable only to persons who are direct recruits to the post of Record Clerk.

6. A perusal of G.O.Ms.No.321, dated 02.07.1998, would reveal that there is no distinction made therein with regard to the applicability of the Government Order for the promotees or the direct recruits. As such, the audit objections itself seem to be not in conformity with what has been ordered in G.O.Ms.No.321. There is absolutely no reference to the applicability of the Government Order for the direct recruits alone. Hence, the consequential recovery sought to be made, based on the audit objections, cannot be sustained.

7. Further, the Hon'ble Supreme Court, in *White Washer's case (supra)*, had held that excess payments, which have been mistakenly paid by the employer to the employee for a period in excess of 5 years, is



impermissible in law. The relevant portion of the order reads as follows:-

WEB COPY

“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 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."

8. Apparently, the impugned order seeks for recovery of the excess payment, which is admittedly paid owing to the mistake of the department for a period exceeding 5 years from the date of the impugned order, is impermissible, as per the laid down by the Hon'ble Supreme Court in *White Washer's case (supra)*. As such, the consequential recovery cannot be sustained.

9. In the light of the above findings, the impugned order passed by the third respondent, dated 14.12.2017, is quashed. In case any recovery has been made, pursuant to the impugned order dated 14.12.2017, the same shall be refunded to the petitioner herein, within a period of four (4) weeks from the date of receipt of a copy of this order. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2023

Index:Yes/No
Speaking order/Non-speaking order
hvk



W.P.No.20877 of 2018

To
WEB COPY

- 1.The Secretary to Government,
Government of Tamil Nadu,
Finance (Pay Cell) Department,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai - 600 003.
- 3.The Zonal Officer,
Zone-8, Revenue Division,
Corporation of Chennai,
Chennai.



WEB COPY



W.P.No.20877 of 2018

M.S.RAMESH,J.

hvk

W.P.No.20877 of 2018

09.02.2023