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*WP.No.27785 of 2016*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.27785 of 2016

and

WMP.Nos.23970& 23971 of 2016 and 14781/2017

R.Gandhi

... Petitioner

Versus

1.Government of Tamilnadu

Represented by Agricultural Production

Commissioner and Secretary to Government,  
Agriculture(OS) Department,  
Secretariat, Chennai – 600 009.

2.The Commissioner of Agriculture,  
Chepauk, Chennai – 600 005.

3.The Production Officer,  
Agricultural Extension Wing,  
Office of the Commissioner of Agriculture,  
Chepauk, Chennai – 600 005.

4.The Accounts Officer / Pension 7,  
Office of the Accountant General (A & E),  
Tamilnadu, Chennai – 600 018.

... Respondents



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Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the orders in (1) Government letter No.29112/OS/2014-8, Agriculture (OS) Department, dated 16.09.2015 of the first respondent and (2) Lr.No.Pen.7/II/10714001/Retd/15-16/361, dated 09.12.2015 of the 4<sup>th</sup> respondent and Pro.Na.Ka.No.53346/A2/2015/Ve.Vi-P, dated 26.07.2016 and Na.Ka.No.53346/A2/2015/Ve.Vi-P, dated 27.07.2016 of the second respondent and to quash the same and to issue consequential directions to the respondents to restore the Selection Grade of the Petitioner as Assistant from 14.02.2006 and desist from recovering any amount from his DCRG and further direct the respondents to grant forthwith all retirement and pensionary benefits to the petitioner and disburse all arrears with interest within a time frame.

|                |   |                         |
|----------------|---|-------------------------|
| For Petitioner | : | Mr.M.Ravi               |
| For RR 1 to 3  | : | Mr.U.Baranidharan, AGP  |
| For R4         | : | M/s.Hema Murali Krishna |

### ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to the orders of the 1<sup>st</sup> respondent dated 16.09.2015 and of the 4<sup>th</sup> respondent dated 26.07.2016 and of the 2<sup>nd</sup> respondent dated 27.07.2016 and to quash the same and to direct the respondents to restore the selection grade of the petitioner as Assistant from 14.02.2006 and to quash the order directing



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recovery of amount from DCRG amount of the petitioner herein. The petitioner also seeks grant of all retirement and pensionary benefits to the petitioner along with arrears.

- (2) The petitioner had joined the service on 22.05.2005 in the Tamil Nadu Cooperative Oil Seeds Growers Federation Limited [TANCOF]. The petitioner was then absorbed in the Agricultural Extension Wing of the Department of Agriculture from 01.04.2002. He had been earlier promoted as Assistant on 14.02.1996 in TANCOF and had been granted Selection Grade from 13.02.2006 with effect from 14.02.2006 by proceedings dated 20.03.2007. He was drawing Selection Grade of Pay till 30.09.2015 when he retired from service on attaining the age of superannuation. Thereafter, the respondents had forwarded the pension proposals to the Accountant General [A&E], Tamil Nadu, by a letter dated 05.10.2015. It was returned and the correspondences were going to and fro for sanction of pension. Finally, the Impugned Order came to be passed claiming that the petitioner was not entitled for Selection Grade pay and that



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therefore, having been granted Selection Grade of pay with effect from 14.02.2006, the excess pay paid to him should be recovered. The pensionary benefits of the petitioner had also not been released. Questioning these orders passed, the writ petitioner had filed the present writ petition.

- (3) The learned counsel for the petitioner placed very strong reliance on the judgment of the Hon'ble Supreme Court reported in **2015 [4] SCC 334 [State of Punjab Vs. Rafiq Masiah [White Washer case]]**, which had been quite often used whenever there is recovery of amounts already drawn by a public servant. The Hon'ble Supreme Court had examined various categories of such recovery and had laid emphasis on the fact that the recovery should normally be within a period of five years. It was also stated that if it is after more than five years and if the same had accumulated, then such recovery would be iniquitous and would place a burden on the public servant.
- (4) It was also held that recovery should not be normally resorted after five years after the date of retirement of the public servant unless it is



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being glaringly found that owing to misrepresentations given by the Government servant, excess pay had been drawn by him. In the instant case, records are clear. The petitioner had not misrepresented seeking grant of Selection Grade, but, rather Selection Grade had been granted by the respondents themselves by proceedings in Rc.AEW/Estt/240/A1/2006 dated 30.03.2007 passed by the Production Officer, Agricultural Extension Wing, Department of Agriculture, Chennai. Therefore, consciously Selection Grade pay was granted to the petitioner herein. The relevant portions of the above cited judgment of the Hon'ble Supreme Court are as follows:-

*"15...The apparent explanation for the aforesaid conclusion is, that the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e. Class III and Class IV—sometimes*



*denoted as Group C and Group D) of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.*

.....

*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."*

- (5) Heard the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned Standing counsel appearing for the 4<sup>th</sup> respondent.
- (6) The learned Additional Government Pleader raised his objections and stated that since grant of Selection Grade was not proper, there should be recovery and the period of delay of more than 10 years should not come in the way of recovery being effected from DCRG of the



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petitioner herein. However, the judgment of the Hon'ble Supreme Court is binding on this Court. As stated above, it had been very clearly held that if recovery is iniquitous and more particularly if it is resorted to after a period of five years, then Courts can interfere with it. The judgment also has specific reference to Class III and IV employees and the petitioner who is Assistant, would normally be categorised as Class III employee. The ratio laid therein therefore, would enure to the petitioner herein.

- (7) The writ petition stands **allowed** and the Impugned Orders passed by the respondents 1, 4 and 2 dated 16.09.2015, 09.12.2015, 26.07.2016 and 27.07.2016 respectively are quashed. The retirement benefits to be issued to the petitioner by the respondents. Such proceedings to be issued within a period of twelve weeks from the date of receipt of a copy of this order.
- (8) I would leave the issue of Special Grade open and the respondents may examine whether the petitioner is entitled for Special Grade of pay during his service and pass necessary proceedings in that regard.



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No costs. Consequently, connected miscellaneous petitions are closed.

04.09.2023

AP

Internet : Yes

To

- 1.The Agricultural Production Commissioner  
and Secretary to Government,  
Government of Tamilnadu,  
Agriculture(OS) Department,  
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Agriculture,  
Chepauk, Chennai – 600 005.
- 3.The Production Officer,  
Agricultural Extension Wing,  
Office of the Commissioner of Agriculture,  
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- 4.The Accounts Officer / Pension 7,  
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Tamilnadu, Chennai – 600 018.



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C.V.KARTHIKEYAN, J.,

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