



W.P. No. 24565 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No. 24565 of 2022

&

W.M.P. Nos. 23533 & 23535 of 2022

D. Sasikala

..Petitioner

Vs.

1. The Registrar General,
High Court of Judicature at Madras,
High Court, Chennai – 600 104.
2. The Principal District Judge,
Thiruvallur District,
Thiruvallur – 602 001.
3. The Subordinate Judge,
Thiruvallur District,
Thiruvallur – 602 001.

..Respondents



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Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent in Na.Ka. No. 267 of 2022 dated 12.04.2022 confirming the order dated 15.03.2021 in Na.Ka.No. 204/2021 and to quash the same and to consequently direct the respondents to restore the earlier pay of the petitioner.

For Petitioner :: Mr.M.V. Seshachari

For Respondents :: Mr.Ayyadurai,
Senior Advocate for
Mr.A. Durai Eswar for
R1 to R3

O R D E R

(Made by S. Vaidyanathan,J.)

The present writ petition has been filed challenging the order dated 12.04.2022 passed by the 3rd respondent in Na.Ka.No. 267 of 2022 confirming the order dated 15.03.2021 in Na.Ka. No. 204 of 2021, quash the same and consequently direct the respondents to restore the earlier pay of the petitioner.



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2. The petitioner had applied for selection to the post of Grade III Steno Typist through Tamil Nadu Public Service Commission and attended the examination conducted by the Commission on 27.01.2008. After successful completion of the same and after verification of original certificates in November, 2008, she was given appointment to the said post and she joined duty at Sub Court, Poonamallee on 31.07.2009 as per proceedings in D.No. 2759/A/2009 dated 22.07.2009.

3. Based on the recommendations of Official Committee, 2009, vide G.O.Ms. No. 234, Finance (PC) Department dated 01.06.2009, orders were issued revising the scales of pay of employees/teachers notionally with effect from 01.01.2006 with monetary benefit from 01.01.2007. Subsequently, vide G.O.Ms. No. 258, Finance (PC) Department dated 23.06.2009, orders were issued allowing fitment benefit to the new recruits appointed between 01.01.2006 and 31.05.2009. Subsequent to the issuance of aforesaid G.O.s, based on the representation made by some of the employees Associations/individual employees, a One Man Commission was constituted to examine the anomalies, if any, in the recommendations of



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Official Committee, 2009 and G.O.Ms. No. 340 Finance (PC) Department dated 26.08.2010 came to be issued by the Government to rectify the anomalies as pointed out by the One Man Commission.

4. Following the said G.O., the petitioner, claiming that she is entitled to the benefit of G.O.Ms. No.340 dated 26.08.2010, made a requisition to revise and fix her pay as per the said G.O. and her pay was accordingly revised and fixed with effect from the date of her joining duty i.e, 31.07.2009. However, during the internal audit conducted by the Internal Audit Wing, High Court, Madras, upto the period 31.07.2019, it was found that her pay had been fixed on a higher scale by way of fitment benefit to which she was not eligible as she had joined duty only on 31.07.2009, subsequent to the cut-off date, namely, 01.06.2009 prescribed under G.O.Ms. No. 340 dated 26.08.2010. Consequent thereupon, the increment in pay granted to her with effect from 31.07.2009 was ordered to be recovered. The petitioner submitted a representation to the 1st respondent through respondents 2 and 3 to reconsider the decision taken and she was



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informed that the competent officer to reconsider the decision would be the 3rd respondent, in whose Court, the petitioner was employed. Thereafter, the 3rd respondent passed an order dated 15.03.2021 in D.No. 204 of 2021 for recovery of a total sum of Rs. 9,94,514/- in 75 instalments commencing from the month of April, 2021. The subsequent representation made by the petitioner to reconsider the aforesaid order came to be rejected by the impugned proceedings dated 12.04.2022. Hence, the present writ petition.

5. During the pendency of the writ petition, this Court had granted an interim stay of future recovery by order dated 13.9.2022.

6. According to the petitioner, eventhough she had been selected based on the examination conducted by the Tamil Nadu Public Service Commission in January, 2008 and scrutiny of her original documents was also completed in November, 2008, she could join duty only on 31.07.2009 due to administrative delay. She would further state when she was very



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much qualified and got selected prior to cut-off date of 01.06.2009 to claim the benefit of fitment with multiplying factor of 1.86 and there was no fault/delay on the part of the petitioner in joining service. Further, she would state that even assuming that G.O.Ms. No. 340 dated 26.08.2010 is not applicable to her, in the light of the judgment of the Hon'ble Apex Court in *State of Punjab V. Rafiq Masih* reported in (2015) 4 SCC 334, the recovery order is illegal as the post of Steno Typist Grade III comes under Group IV service. The petitioner would further state that when the alleged excess amount has been paid for more than five years before the issuance of order of recovery, the respondents cannot recover salary for the period between 31.07.2009 and 28.02.2020 as it is impermissible in the light of the aforesaid judgment of the Hon'ble Apex Court.

7. On the other hand, the main contention of the respondents is that when the petitioner is not entitled to the benefit of G.O.Ms. No. 340 dated 26.08.2010 and when there is an erroneous fixation, the recovery that has been ordered is perfectly valid. Moreover, only after giving due opportunity to the petitioner, the recovery has been made. According to the



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respondents, a careful perusal of the aforesaid G.O. would clearly reveal that *“incumbents recruited as Junior Assistants from among the Contract Assistants/Agricultural Officers and any other similar categories of posts recruited by the Tamil Nadu Public Service Commission in the same batch prior to 01.06.2009 and joined/appointed on a subsequent date on or after 01.06.2009 due to administrative reasons duly allowing the fitment benefit to the individual employees concerned as a special case. As per the said G.O., the pay fixation has been recommended to those employees, who were already working. Moreover, the petitioner is not entitled to fitment benefit as she has not been recruited as Junior Assistant from among the Contract Assistants, but as Steno Typist Grade III and she had joined duty only on 31.07.2009.*

8. Heard both parties.

9. The factum that the petitioner had joined service on 31.07.2009 as Steno Typist Grade III pursuant to her selection in the examination conducted by Tamil Nadu Public Service Commission in January, 2008 is not in dispute. Though the petitioner would state that she got selected prior



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to 01.06.2009 and only on account of delay due to administrative reasons in issuing the appointment order, she had joined duty on 31.07.2009 and therefore, in the absence of any fault/delay on her part in joining the service, she cannot be deprived of fitment benefit as per G.O.Ms. No. 340 dated 26.08.2010, a careful perusal of the said G.O. would clearly reveal that it is not applicable to the petitioner. The relevant portions of the said G.O. at paragraph Nos. 3 and 4 are extracted hereunder:

“3. The One Man Commission has examined and observed that the disparity in pay of Junior Assistants/Agricultural Officers recruited by the Tamil Nadu Public service Commission in March `2009 and May `2009 and who joined on or after 1-6-2009 has arisen due to delay in relieving the individual employees by the departments concerned where they were working as Contract Assistants and in the case of Agricultural Officers, the delay in joining duty is due to the issue of posting orders issued by the Regional Joint Directors of Agriculture which is purely administrative delay and not the fault of the individuals. Hence, considering the above peculiar circumstances and also taking into account the fact that some of the juniors happened to draw more pay than their seniors (as per their seniority list of Tamil Nadu Public Service Commission) by way of fitment benefit due to their joining prior to 01.06.2009 and the seniors joining duty after 01.06.2009 due to administrative reasons, the Commission has therefore recommended to compensate the monetary loss incurred by the employee recruited by Tamil Nadu Public Service Commission in March, 2009 and May, 2009 in the same batch but appointed on a date after 01.06.2009 due to



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administrative reasons by relaxing Rule-9 of the Tamil Nadu Revised Scales of Pay Rules, 2009 in favour of the incumbents.

4. *The Government have carefully examined the above recommendations of the One Man Commission and decided to rectify the anomaly as pointed out by the One Man Commission. Accordingly, Government direct that in exercise of the powers conferred under Rule -13 of the Tamil Nadu Revised Scales of Pay Rules, 2009 relax the Rule-9 of the Tamil Nadu Revised Scales of Pay Rules, in favour of the incumbents recruited as Junior Assistants from among the Contract Assistants/Agricultural Officers and any other similar categories of posts recruited by the Tamil Nadu Public Service Commission in the same batch prior to 1-6-2009 and joined/appointed on a subsequent date on or after 1-6-2009 due to administrative reasons duly allowing the fitment benefit to the individual employees concerned as a special case. However, Government direct that the above fixation benefit shall be given notional effect from the date of appointment of the individual employees concerned with monetary benefit from 1-8-2010.*

....

The above orders allowing fitment benefit is not applicable to the new recruits in whose cases the selection list have been issued by the Tamil Nadu Public Service Commission/Employment Exchange and consequent appointment orders issued by the Heads of Departments after 1-6-2009 i.e, after the date of issue of notification of the Tamil Nadu Revised Scales of Pay Rule, 2009 in the G.O. first read above. In such cases, the new recruits are entitled to have their pay fixed only at the minimum of the Pay Band plus Grade Pay applicable to the respective posts.”



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The petitioner has not been recruited as Junior Assistant from among the Contract Assistants/Agricultural Officers and any similar categories of posts of the same batch prior to 01.06.2009 and joined or appointed on a subsequent date on or after 01.06.2009 due to administrative reasons by the Tamil Nadu Public Service Commission. The impugned order dated 12.04.2022 also clearly spells out that a person, who has been appointed only on 31.07.2009, that too, to the post of Steno Typist Grade III, will neither be entitled to get 1.86 subsidy allowance as per G.O.Ms. No. 234 dated 01.06.2009 nor the hike in allowance based on the recommendations of One Man Commission.

10. Therefore, for the foregoing reasons, we hold that we are in complete agreement with the contention of the respondents that the petitioner is not entitled to fitment benefit as per G.O.Ms. No. 340 dated 26.08.2010 and refixing of salary made is perfectly in order, more so, when the same has not been questioned by the petitioner. However, the recovery that has been ordered is not sustainable in the light of the judgment of the Hon'ble Supreme Court in *State of Punjab V. Rafiq Masih* reported in **2015 4 SCC 344**, particularly, clauses (i) and (iii) of paragraph No.12 and



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the same are reproduced hereunder:

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12. 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 (for Group ‘C’ and Group ‘D’ service)

.....

(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....”

11. In fine, the impugned order is set aside only to the extent of recovery and the writ petition is allowed in part. No costs. Connected miscellaneous petitions are closed.

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(S.V.N.J.) (K.R.S.J.)
11.08.2023

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S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.

nv

To

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