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W.P.No.21692 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P. No.21692 of 2017

and

W.M.P.Nos.22680 & 35278 of 2017 and 9628 of 2018

R.Thirukumaran
S/o.V.Rajamanickam
No.375/7, Ganga Kavery Flats
19th Main Road
Anna Nagar West
Chennai 600 040

... Petitioner

/Vs/

1.The State of Tamil Nadu
Represented by Additional Chief Secretary to Government
Finance (Pay Cell) Department
Fort St. George
Chennai 9

2.The Secretary to Government
Personnel and Administrative Reforms
Fort St. George
Chennai 9

3.The Directorate of Vigilance and Anti-Corruption
Rep. by the Deputy Director
Chennai 600016

4.Pay and Accounts Officer (South)
Integrated Complex for Finance Department
1st Floor, Veterinary Hospital Campus
Anna Salai, Nandanam
Chennai 35

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records on the file of the third Respondent pertaining to the impugned order bearing Na.Ka.No.VI/5766 of 2016 dated 01.08.2017 and quash the same.

For Petitioner : Mr.C.V.Shailandhran

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorari to call for the records on the file of the third Respondent pertaining to the impugned order bearing Na.Ka.No.VI/5766 of 2016 dated 01.08.2017 and quash the same.

2(a).The case of the Petitioner is that he joined as a temporary Junior Assistant in the office of the Commissioner of Transport Department on 01.10.2003, as per G.O.Ms.Nos.84 & 85 (P & AR) dated 04.07.2003. He and similarly placed persons have joined the post of temporary Assistant/Junior



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Assistants in various departments on contract basis. The Government of Tamil Nadu has made a policy decision to conduct a Special Competitive Examination in Group IV through Tamil Nadu Public Service Commission to absorb the temporary employees as Junior Assistant in Tamil Nadu Ministerial Service/ Tamil Nadu Judicial Ministerial Service. As a result, G.O.Ms.No. 155 (P&AR) department dated 19.09.2006 was issued by the Government of Tamil Nadu, by way of which the Tamil Nadu Public Service Commission conducted a Special competitive examination in Group IV standard to the existing in service Assistants/Junior Assistants, who were given temporary appointments on contract basis in the year 2003.

2(b).The Petitioner appeared in the Special competitive exam that was held on 17.02.2008 and thereafter vide Memorandum No.2613/ SCE/APD-L/2009 dated 07.05.2009, he was selected provisionally by the Tamil Nadu Public Service Commission for appointment by direct recruitment to the posts included in the Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service. Pursuant to which, as per posting order dated 27.05.2009 bearing Re.No.A1/13943/2006, he was posted as a Junior Assistant in the office of the third Respondent and thereafter he was regularized by an order dated 04.08.2010 after completion of the probation. Subsequently, on 21.12.2011, he



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was promoted to the post of Assistant vide Lt.No.A5/8849/2011 D.O.No. 1046/2012 dated 04.10.2012.

2(c).On 02.07.1998, GO.Ms.No.321, Finance (Pay Cell) Department was issued by the Government of Tamil Nadu under Tamil Nadu Revised Scales of Pay Rules 1998 for regulation of pay for the Junior Assistants with higher qualifications. Since the Petitioner possessed a Post Graduate Degree in M.A (History) that was obtained on 06.10.2003 from Annamalai Open University, he had submitted a representation dated 24.08.2009 to the third Respondent, to extend the benefit of G.O.Ms.No.321m dated 02.07.1998. The third Respondent vide his order dated 27.10.2009 bearing Na.Ka.No.A1/11731/2009 revised his pay scale.

2(d).The Director of Vigilance and Anti-corruption had issued a Memorandum dated 11.07.2016 bearing Na.Ka.No.V1/5766/2016, by relying upon the objections raised by the fourth Respondent in his report bearing Na.Ka.No.285/A2/14 dated 09.09.2015, stating that the two advance increments that was given to the Petitioner as per G.O.Ms.No.321 was wrong and therefore, a sum of Rs.78,914/- has to be recovered from the Petitioner towards the excess salary paid between the period 04.06.2009 to 31.12.2014.



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On receipt of the same, the Petitioner had sent a detailed reply to the Director of Vigilance and Anti-corruption on 18.08.2016, stating that the Government is not entitled for recovery of excess payment from employees belonging to Class-III and Class-IV services, more particularly when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

2(e).The third Respondent had issued a show cause notice to the Petitioner vide letter bearing Na.Ka. No.V1/5766/16 dated 07.02.2017 requesting him to show cause as to why the excess salary paid should not be recovered from him. On receipt of the show cause notice, he had sent a reply to the Director of Vigilance and Anti-corruption on 21.02.2017. However, by placing reliance upon the clarification letter issued by the first Respondent bearing Letter No.42776/PC/99-1 dated 27.10.1999 and also on the report of the fourth Respondent herein, the third Respondent passed the impugned order bearing Na.Ka.No.V1/5766/16 dated 01.08.2017, by refixing his scale of pay and also ordering recovery of a sum of Rs. 1,36,272/- in monthly installments towards payment of excess pay between the period 04.06.2009 and 31.07.2017.

2(f).The third Respondent has passed the impugned order by placing reliance upon the objections raised by the fourth Respondent dated 09.09.2015



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bearing Na.Ka. No.285/A2/14, who in turn placed reliance upon the Letter No.42776/PC/99-1 dated 27.10.1999. The said letter of the first Respondent states that in respect of the G.O.Ms.No.321, a clarification was sought for as to whether employees who have acquired Post-Graduate Degree in the Open University system directly are eligible for higher start of pay and as such it was clarified that the higher start of pay at two stages above the minimum of the scale of pay of Rs.3200-85-4900, i.e., at Rs.3,370/- allowed to Graduate Junior Assistant/ Typist as envisaged in G.O.321 is not applicable to those who acquired a Post-Graduate Degree or Degree directly through Open University without undergoing a minimum of 3 years Degree course. Based on this letter, the impugned order of the third Respondent has been passed holding that the Petitioner is not eligible for higher start of pay since he had completed Post graduation from Annamalai Open University without undergoing a minimum of 3 years degree course. The higher start of pay was sanctioned to him in accordance with G.O.Ms. No.321, Finance (Pay Cell) Department, dated 02.07.1998 and the third Respondent now intends to take the same away from him by relying upon a clarification letter that was issued by the first Respondent way back in the year 1999.

2(g).G.O.Ms.No. 180 (P&A) Department, dated 11.09.2000,



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G.O.Ms.No.217 (P&A) Department dated 08.09.2007 and GO.Ms. No. 107

(P&A) Department dated 18.08.2009 specifically states that the Graduate degree and Post-graduate degree issued by Annamalai Open University and Madurai Kamarajar Open University is equal to the degree obtained in regular stream. However, the third Respondent had issued the impugned order by relying upon a clarification letter that was issued without any legal basis. Hence, this Writ Petition to call for the records on the file of the third Respondent pertaining to the impugned order bearing Na.Ka.No.VI/5766 of 2016 dated 01.08.2017 and quash the same.

3(a).Learned counsel for Respondent submitted that G.O.Ms.No.321 of the Finance (Pay cell) Department dated 02.07.1998 relied upon by the Petitioner for granting of higher start of pay at two stages above the minimum scale of pay for those who possess Graduate qualification above the minimum qualification required for the post. But for the question of whether the post graduate degree obtained by the Petitioner from open university scheme of Annamalai University is equivalent to the degree awarded under regular scheme, the Petitioner relied upon the G.O.Ms.No.307 of School Education (C2) Department dated 15.12.2000. The said G.O. Ms.No.307 related to education department and is intended only for the benefit of employees of



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education department and was issued by education department. In the cancellation of said G.O.Ms.No.307 by G.O.Ms.No.118 of School Education [SE 5(2)] Department dated 10.07.2013, it is made clear that the original G.O.Ms.No.307 is intended for employees of education department.

3(b).G.O.Ms.No.180 of Personnel and Administrative Reforms (R) Department dated 11.09.2000, G.O.Ms.No.217 of P&AR (R) Department dated 08.09.2007 and G.O.Ms.No.107 of P&AR (R) Department dated 18.08.2009, are related to qualification for appointment to the posts and has nothing to do with the issue of granting the benefit of higher start of pay at two stages above the minimum level. The impugned order is not based upon the Letter No.42776/PC/99-1 of Finance (PC) Department dated 27.10.1999 alone. In fact the letter itself is nothing but a clarification of the order G.O.Ms.No.321 of the Finance (Pay cell) Department dated 02.07.1998 and hence the order of the authority is based upon G.O.Ms.No.321. The order of cancellation was initiated after the audit report by following due procedure i.e., after requesting clarification about G.Os and issuing show cause notice and obtaining the response of the Petitioner for the same. Hence the issue was brought to the notice of the Petitioner and after following due procedure the order was passed and so there is no question of unnecessary delay.



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3(c).The G.O.Ms.No.321 does not apply to the Petitioner and the letter is nothing but clarification of inapplicability of the said G.O and hence there is no question of the letter prevailing upon a G.O.

3(d).G.O.Ms.No.321 is not the sole G.O for giving the benefit to the Petitioner but based upon G.O.Ms.No.307 the question whether the Petitioner had the qualification was decided and the said G.O.Ms.No.307 itself was not applicable to the Petitioner and hence the Petitioner version is nothing but concealment of a part of fact.

3(e).G.O.Ms.No.180 (P&A) dated: 11.09.2000 is meant exclusively for the purpose of employment to posts. With regard to grant of higher start of pay at two stages above the minimum scale of pay for graduates, the relevant order is G.O.Ms.No.321 and whether the Petitioner had the required qualification is decided based upon the other relevant orders pertaining to the subject.

3(f).The amount is granted from the public exchequer i.e., tax payers' money and hence no one has a right to it except the public as observed by this Court in *M.K.Ramadoss Vs Government of Tamil Nadu*, wherein in para 3 it

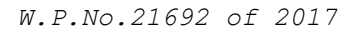


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was observed as *"incentive increment is not a matter of right, but it is only on account of gratuitous act of the Government"*. In the order of the authority in granting the said incentive, it was made clear that if it became known at a later point of time that the grant of incentive is wrong, then the recovery would be made from his salary. Only on such condition the said incentive was granted. When the Petitioner received the order without any hesitation for the condition, he cannot now revert back and raise objection for recovery.

3(g).The order of recovery made against the Petitioner is sustainable in law and there is absolutely no ground to cancel it and the order of refixing the salary is in consonance with the G.Os and the rulings relied upon by the Petitioner has no relevancy to the case on hand.

4(a).The learned counsel for the Respondents further submitted that the Petitioner joined service in the office of the third Respondent as a Junior Assistant on 04.06.2009 and the higher start of pay two increments has been sanctioned to him with effect from 04.06.2009 for having passed M.A., Degree Course prior to his appointment based on G.O.Ms.No.321, Finance (Pay Cell) Department, Dated. 02.07.1998 vide Proceedings of the Superintendent of Police (CR) Vigilance and Anti-Corruption, Chennai Rc. No.A1/11731/2009,



6. When that being the contention of the both the parties' arguments, this Court finds that as per the findings rendered by the Hon'ble Apex Court in the case of State of Punjab Vs. Rafiq Masih (White Washer), recovery is impermissible from any person belonging to Class III and Class IV Service (Group C and D service). The Petitioner is also belonging to above the said category. Even though the Petitioner has given a representation that he is



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entitled for increment, the employer made recovery from the Petitioner, which is harsh and arbitrary. It is pertinent to note that excess payment have been made for the period of five years before the impugned order is passed. In view of the above, impugned order passed by the third respondent is without application of mind, by placing reliance on the letter of the authority. The excess payment was not at the fault of Petitioner but the mistake committed by the School authorities by refixing and granting him the said amount.

7.At this juncture, the impugned order cannot be sustained and the Petitioner's case has to be considered positively. Accordingly there cannot be any recovery on the amount wrongly fixed by the Government and as per the Apex Court order stated supra regarding the refixation, this Court is of the view that the refixation has been done as per the audit report and the same is correct and this Court is not inclined to interfere with the order passed for refixing the salary of the Petitioner. The Government cannot recover the excess amount already paid, before five years from the date of impugned order as it was not paid due to the Petitioner's mistake and it was only employer's mistake. Except the recovery portion, the refixation done by the authorities in the impugned order bearing Na.Ka.No.VI/5766 of 2016 dated 01.08.2017 holds good.



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8. With the above observation and direction, this Writ Petition is disposed

of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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