



WEB COPY



W.P.No.14652 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.14652 of 2017
and
W.M.P.Nos.15896 and 22784 of 2017

V.Vasugi

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary,
Agriculture Department,
Fort St.George, Chennai-9.

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

3.The Joint Director of Agriculture,
Krishnagiri.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the order of the 3rd respondent made in Se.Mu.Aa.No.A2/4783/2016-1 dated 22.03.2017 and to quash the same and consequently, direct the respondents to extend all benefits as per the fixation



W.P.No.14652 of 2017

already made and extended.

For Petitioner : M/S.N.R.Jasmine Padma

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

This Writ Petition has been filed to quash the order of the 3rd respondent made dated 22.03.2017 and to direct the respondents to extend all the benefits as per the fixation already made and extended.

2.The learned counsel for the petitioner would submit that the petitioner joined as Junior Assistant on 12.04.1991 and the probation came to be declared on 12.04.1993. On completion of 10 years, she has been extended with selection grade scale of pay with effect from 12.04.2001. Further, her name was included in the panel of persons fit for promotion to the post of Assistant on 15.03.2003. She was promoted belatedly as Assistant on 18.09.2009 and then promoted as Superintendent on 03.03.2017 till date. Her scale of pay came to be fixed at Rs.9300-34800 with Grade Pay



W.P.No.14652 of 2017

of Rs.4200/- effective from 01.01.2006 as per G.O.Ms.No.234 Finance (PC) Department dated 01.06.2009 and that of Government Letter No.63305/Pay Cell/2010-1 dated 08.11.2010. Further, the petitioner was extended with appropriate scale of pay from 01.08.2010 by the respondent. While so without recourse to any of the basic requirement, at the instance of the Audit Objection, said to have been reported by the 2nd respondent, dated 29.06.2016, the 3rd respondent issued the impugned order dated 22.03.2017 with an order of recovery of excess payment and that of a consequential re-fixation after a decade of such fixation. Hence, this Writ Petition.

3.The learned Government Advocate appearing for the respondents would submit that the probation was declared on 12.04.1993. On completion of 10 years, the petitioner has been extended with selection grade scale of pay with effect from 12.04.2001 and her name was included in the panel to the post of Assistant on 15.03.2003 and thereafter, promoted as Superintendent on 03.03.2017. As per G.O.Ms.No.234 Finance (PC) Department dated 01.06.2009, her scale of pay has been fixed. The



W.P.No.14652 of 2017

petitioner was extended with appropriate scale of pay from 01.08.2010.

Following the orders, the petitioner was paid Rs.9300-34800 + 4200 instead of Rs.5,200-20200 + 2800 and the respondents wrongly fixed the revised pay fixation. Subsequently, based on Audit report, the respondents issued the impugned order for recovery of the excess payment.

4.Heard the learned counsel appearing on either side and perused the material on records.

5.On a perusal of the documents, it is seen that the petitioner joined as Junior Assistant on 12.04.1991 and on completion of ten years of service, she has been extended with selection grade scale of pay from 12.04.2001. Due to the Administrative delay, there was no default of the petitioner in sending her for Bhavanisagar Training. Thereafter, the petitioner was belatedly promoted to the post of Assistant on 18.09.2009 and then promoted as Superintendent on 03.03.2017 and her scale of pay came to be fixed at Rs.9300 – 34800 + Grade Pay 4200 with effect from 01.01.2006 as



W.P.No.14652 of 2017

per G.O.Ms.No.234 dated 01.06.2009. As per the Government letter dated 08.11.2010, the petitioner was extended with appropriate scale of pay from 01.08.2010. The petitioner was awarded with the selection and Special grade scale of pay and also applicable grade pay provided thereunder. The grant of such benefit has been done consequent upon the Government Orders as well as that on the clarifications in regard to pay rules providing for such revised benefits. The petitioner has been granted the same with effect from 01.01.2006. It is the first time the so called Audit Objection is made after ten long years. Based on the said report, the respondent issued the impugned order dated 22.03.2017 for the recovery of excess payment of Rs.4,24,614/- to be repaid in 59 installments. The wrong committed by the Authorities has to be rectified and the same can be refixed as per the order impugned.

6.Hence, this Court is inclined to quash a portion of the order. Further, there is no material to show that the petitioner has committed either



W.P.No.14652 of 2017

WEB COPY

misrepresentation or suppression for refixing the pay. The impugned order for recovery of excess payment from DCRG cannot be recovered, following the decision of the Supreme Court as laid in State of Punjab v. Rafiq Masih (Whitewasher's case) reported in 2015 (2) SCC 151. The amount has been paid long back and the excess amount paid cannot be recovered from the petitioner. Accordingly, this Writ Petition is partly allowed. Consequently, connected Miscellaneous petition is closed. No costs.

21.11.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
mps

To

1. The Secretary,
Agriculture Department,
Fort St. George, Chennai-9.

6/8



W.P.No.14652 of 2017

WEB COPY

- 2.The Commissioner of Agriculture,
Chepauk, Chennai-600 005.
- 3.The Joint Director of Agriculture,
Krishnagiri.

V.BHAVANI SUBBAROYAN, J,

mps



WEB COPY



W.P.No.14652 of 2017

W.P.No.14652 of 2017
and W.M.P.Nos.15896 & 22784 of 2017

21.11.2023