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W.P.No.17006 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.17006 of 2017
and W.M.P.Nos.35436 & 18462 of 2017

T.Namasivayam

.. Petitioner

VS

- 1.The Government of Tamil Nadu
Rep. by Secretary to the Government ,
Finance (Pay Cell) Department,
Fort St. George, Chennai 600 009.
- 2.The Secretary to the Government,
Government of Tamil Nadu,
School Education Department,
Fort St. Goerge, Chennai 600 009.
- 3.The Director of School Education,
College Road, Chennai 600 006.
- 4.The Chief Educational Officer,
Thanjavur District, Thanjavur.
- 5.The Headmaster
Government Higher Secondary School
Pudukottai Ullur, Thanjavur District.
- 6.The Branch Officer
O/o. Accountant General (A and E), Teynampet,
Chennai 18.
- 7.The Sub Treasury Officer
Pattukottai, Thanjavur District.

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 5th and 6th respondents in relation to the proceedings issued in No. Na.Ka.No. 101/2017 dated 15.5.17 and in No.Pr.AG (A&E) PEN PO 9/10915909/1 RO 915909 dated 7.04.2017 and quash the same and issue a consequential direction to the respondents to fix the selection grade scale of pay of petitioner in the post of Vocational Instructor at Rs. 15600-39100+Rs 5400 GP with notional Effect from 1.1.2006 and monetary benefit from 1.1.2011 and then fix last drawn pay and grant pensionary benefits with arrears.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.V.Nanmaran
Additional Government Pleader
for R1 to R5

Ms.T.S.Selvarani
Standing Counsel
for R6

ORDER

Writ petition had been filed in the nature of a certiorarified mandamus calling for the records of the respondent nos. 5 and 6 relating to the proceedings dated 15.05.2017 and 07.04.2017 respectively and quash the same and issue a direction to the said respondents to fix Selection Grade Scale of Pay of the petitioner in the post of Vocational Instructor at Rs.15600 - 39000 + 5400 GP with notional effect from 01.01.2006 and monetary benefits from 01.11.2011.



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2. The petitioner was originally appointed as Part Time Vocational Instructor in Commerce at Government Higher Secondary School, Muthupet, Thanjavur on 01.12.1980 on consolidated pay. He was then appointed on regular time scale of pay as Vocational Instructor with effect from 23.09.1994 in the time scale of pay of Rs.1400 – 2600. This was the scale of pay for the post of B.T. Assistant. He was absorbed by order dated 29.12.1994 of the Chief Educational Officer, Nagapattinam. The services in the post of Vocational Instructor was regularized from 01.04.1990 by proceedings of the Joint Director of School Education dated 10.07.2007. The scale of pay was given in accordance with the recommendation of the V pay commission with effect from 01.06.1988.

3. It must be pointed out that the Government had brought in a policy change by introducing 10 + 2 course in schools abolishing 11 + Pre University Course which was in effect earlier. When the Higher Secondary Course or Plus Two was introduced, several new subjects were also introduced. This necessitated appointment of instructors, who were called Vocational Instructors to take those particular subjects.



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4. Among other subjects, one was Computer Science, as an example. It was not in the main stream of school education prior to introduction of the Higher Secondary Pattern. Vocational Instructors were not absorbed as Teachers in the initial period. However, they discharged the teaching work for higher secondary schools. There was also a concept of Single Part Time Vocational Teacher and Double Part Time Vocational Teacher. Then there was an issue of equalizing both of them. Finally, there was an issue of regularizing the Vocational Teachers and bringing them into the main streamline as teachers of the school.

5. The petitioner herein, as seen from the above, was also appointed as Part Time Vocational Instructor in Commerce. Commerce as a subject was introduced only for the Higher Secondary, the plus two course. The teachers, who took the normal classes were not qualified to take that particular subject at the higher secondary level.

6. The petitioner, therefore, taught students in the higher secondary level at Government Higher Secondary School at Muthupettai Taluk, Thanjavur. He was termed as Single Part Time



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Vocational Instructor. Subsequently, as seen, his services were regularized with effect from 01.04.1990. Thereafter, he was also granted Selection Grade scale of pay again in the post of Vocational Instructor by proceedings dated 10.07.2008 with effect from 01.04.2000 onwards. His pay was fixed in the scale of pay of Rs.6000 – 10500, which was equal to the earlier Selection Grade scale of pay for B.T. Assistant Teachers.

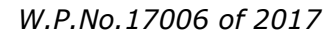
7. Thereafter, Rules were framed for Vocational Instructors and in this regard a Government Order was passed in G.O.(Ms).No.6 dated 04.01.2000. Yet another Government Order was passed in G.O.(Ms).No.234 dated 01.06.2009, wherein, a revised pay of scale was introduced in accordance with the recommendations of the Official Pay Committee constituted by the State Government. It could also be termed as a One Man Pay Revision Committee to examine the fixation of pay. The pay band for the post of B.T. Assistant was Rs. 9300 – 34800 with 4400 GP. The concept of Grade Pay came to be introduced by G.O.(Ms)No.234 dated 01.06.2009. It was also stated that this particular pay band was also applicable to Vocational Instructors like the petitioner herein.



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8. But specific pay was not fixed for Selection Grade / Special Grade scale of pay. This led to an anomaly and the District Educational Officer came to recognize the pay of some of them and not for all. A proposal was sent by the Headmasters of the schools. Some of them were accepted and some were rejected. Thereafter Selection / Special Grade of scales of pay was finally fixed with effect from 01.01.2006 by letter dated 08.11.2010. This was, however, fixed only notionally with effect from 01.01.2006 and monetary benefits were granted from 01.01.2011. The scale of pay band were re-fixed in the pay band of Rs.9300 – 34000 + 4600 GP, with Rs.15600 – 39100 + 5400 GP. This was for Selection Grade of scale of pay.

9. Since there was no effective uniform application, the sixth respondent, the office of the Accountant General, came to re-examine the pay scales which had been fixed, particularly for Vocational Instructors and started issuing notices or letters of proceedings seeking recovery of pay claiming that the pay scale had been wrongly determined. The petitioner is one such who has been issued with such notice. The writ petition has been filed seeking interference with those notices which primarily sought recovery of pay which, according to the sixth respondent, were paid over and

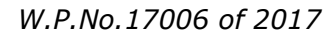


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"Since, the Government has allowed scale of pay of Rs.15600 – 39100 – 5400 Grade Pay to the selection grade Vocational Instructors pay with effect from 01.01.2006 and monetary benefit from 01.04.2013 in G.O.306 dated 12.09.2018, this respondent has addressed the Departmental officer in letter dated 15.09.2020 to forward the pension proposal in respect of the petitioner duly refixing his pay in terms of the G.O.306 dated 12.09.2018 for revision of his pension under the aforesaid G.O."

13. Once this stand has been taken by the fifth respondent, the recovery made in the notices impugned from 01.11.2011 is saved at least from 01.04.2013, wherein, the revision of pay will have to be now proposed by the head of the institution or Headmaster / Headmistress of the school and thereafter, there will be additions and subtractions.

14. On the side of the respondent nos. 1 to 4, however, a counter affidavit had been filed, which counter affidavit is dated 10.10.2017. It must be kept in mind that G.O.(Ms).No.306 had been passed on 12.09.2018 subsequent to the filing of this particular counter affidavit. Therefore, the averments made in the counter affidavit is with respect to a situation prior to the passing of G.O.(Ms)No.306 dated 12.09.2018. At any rate, in the said counter,



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in paragraph nos. 6 and 8, it had been averred as follows:-

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"6. With regard to the averments contained in para no.5 of the affidavit, it is submitted that initially the scale of pay for B.T. Assistant was fixed in the pay band of 9300 – 34800 with Grade Pay of Rs.4400/- but the said pay band is not applicable to the writ petitioner. Further the Government fixed the Selection Grade and Special Grade pay in the G.O.Ms.No.234 dated 01.06.2009 and provided 3% increase in basic pay at Selection / Special Grade of pay. Further the Grade pay of the B.T. Assistant was fixed from Rs.4400/- to 4600/- vide G.O.Ms.No.23 dated 12.01.2011 and in that it was stated that the same is to be fixed notionally from 01.01.2006 and monetary benefits with effect from 01.11.2011. But in the Government orders cited above no where it is mentioned about the Vocational Instructors. By this the writ petitioner has misconstrued the Government Orders. With regard to the averments contained in para no.6 of the affidavit, it is submitted that the Government vide its letter dated 08.11.2010 granted Selection / Special Grade scales of pay with effect from 01.01.2006 notionally and monetary benefits from 01.01.2011 and as averred by the Writ petitioner the 4600/- Grade Pay was granted and 5400/- is granted to other post and not for the Vocational Instructor post. But it was specifically mentioned that Selection /Special Grade scale of pay indicated will take notional effect from 01.01.2006 with monetary benefit from 01.01.2011 for those employees who were awarded Selection Grade / Special Grade prior to 01.01.2006 and the same was restricted to Selection Grade Pay of First Promotion i.e., Rs.4600/- and not 5400/- for Vocational Instructor post.

7.

8. With regard to the averments contained in



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Para no.8 of the affidavit, it is submitted that the writ petitioner is admitting the fact that his pay was fixed by the Headmaster of the School itself is wrong. Here the pay fixing authority is the Chief Educational Officer of the concerned district. Further he has averred that the vocational instructor post has no promotional avenue, it is said averment is true how the writ petitioner has got the promotion of Post Graduate Assistant. Here the writ petitioner is totally contrary to the averments made by him. But in the year 2008 the vide G.O.Ms.185 dated 25.08.2008 the promotional avenue was opened to the writ petitioner. Hence the Grade Pay of Rs.5400/- is not applicable to the writ petitioner. It is further submitted that for those employees who were awarded Selection Grade / Special Grade prior to 01.01.2006 and the same was restricted to Selection Grade Pay of First Promotion i.e. Rs.4600/- and not 5400/- for Vocational Instructor post was admitted by the writ petitioner and now contending that the restriction is not applicable to him but no evidence to this effect was produced by the writ petitioner. He himself is attesting that he was drawing correct pay but the same was not supported with any material evidence by the writ petitioner."

15. It had been therefore insisted by learned Additional Government Pleader appearing for respondent nos. 1 to 4 that the grade pay of Rs.5400/- was not applicable to the writ petitioner. It was stated that for those employees who were awarded Selection Grade / Special Grade prior to 01.01.2006, it was restricted to Selection Grade Pay of First Promotion, namely, Rs. 4600 and not Rs. 5400. As pointed out, this stand has now evaporated consequent to the introduction of G.O.(Ms).No.306 and the specific



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stand of the fifth respondent that a proposal to revise the pay will have to be given extending monetary benefits from 01.04.2013 onwards.

16. The issue therefore now crystallizes to the recovery for the period between 01.01.2011 and 31.03.2013. It must be kept in mind that, the said pay to the petitioner herein was not on the basis of any representation made by the petitioner but consequent to a letter of the Government dated 08.11.2010 which granted monetary benefits from 01.01.2011 and fixed the pay notionally from 01.01.2006. This particular aspect had come to the consideration of the Courts and learned counsel for the petitioner had produced before this Court earlier judgments on this very aspect:-

16.1 In *N.Rajendran and another v the Government of Tamil Nadu, Rep. By its Secretary and Others* [W.P.Nos.11999 & 12000 of 2013 dated 23.10.2019], this Court held as follows:-

"3.However, by an order dated 28.03.2013, the pay was re-fixed and was revised to a lower level pay of Rs.9300/- with grade pay of Rs.4600/-. There was an order also to recover the excess amount paid to the petitioners from 01.01.2011. However, the Government passed G.O.Ms.No.306 Finance (CMPS) Department dated 12.09.2018, increasing the pay of the petitioners from 4600 to 5400 from 01.04.2013. The petitioners are therefore now



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faced with the recovery of excess amount which was paid to them from 01.01.2011 to 31.03.2013. It is well settled that if excess payment is made by the employer by applying wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, then, when such employees are asked to pay the excess amount they would be faced with hardship, when the amount is sought to be recovered from them and if there was no misrepresentation or fraud by the employee in grant of excess amount of pay, and it should not be recovered. The Hon'ble Supreme Court in **Syd Abdul and Other .Vs. State of Bihar and Others** reported in **(2009) 3 SCC 475**, as observed as under:

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58.The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order



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for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, Shyam Babu Verma vs. Union of India, Union of India vs. M. Bhaskar, V. Gangaram vs. Director, Col. B.J. Akkara [Retd.] v. Government of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh & and Bihar SEB v. Bijay Bhadur.”?

4.In view of the above, the order for recovering the excess amount from the pay of the petitioner from 01.01.2011 to 31.03.2013 stands set aside. The Writ Petitions are disposed of on the above mentioned terms. No costs. Consequently, connected miscellaneous petitions are closed.”

16.2 In *V.Sundararajan and another v the Government of Tamil Nadu, Rep. By its Secretary, Finance (Pay Cell) Department and others [W.P.Nos. 12787 & 12788 of 2013 dated 05.03.2020]*, this Court held as follows:-

“6. The relevant portion of the order of this court made in W.P.Nos.11999 and 12000 of 2013 dated 25.10.2019 reads as follows:-

“4. In view of the above, the order for recovering the excess amount from the pay of the petitioner from 01.01.2011 to 31.03.2013 stands set aside. The writ petitions are disposed of on the above mentioned terms.”

7. Considering the fact that scale of pay for the Vocational Instructors was fixed at Rs.15600 - 39100 with grade pay of Rs.5400/- for no fault of the petitioners, but, however, the Government had subsequently recognized the anomaly and re fixed the grade pay and also on



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considering the fact that when the order for recovery was challenged by the similarly placed persons, this court by order dated 25.10.2019 set aside the order of recovery of excess amount paid, this court is inclined to set aside the order of recovery in respect of the petitioners also.

In the result, both writ petitions are allowed and the orders impugned in the writ petitions directing the recovery of the excess amount from the pay of the petitioners from 01.01.2011 to 31.03.2013 are set aside. Amounts, if any, already recovered from the petitioners are directed to be refunded to them within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MPs are closed."

16.3 In *V.Krishnan v The Government of Tamilnadu Rep. By its Secretary, Finance (Pay Cell) Department and others* [W.P.No.2950 of 2014 etc batch dated 03.02.2020], this Court held as follows:-

"8.It is seen from the GO.Ms.No.306, Finance (CMRC) department, dated 12.09.2018 that the grievance of the Petitioners has been met out positively by the Respondent. Therefore, impugned GO.Ms.No.263 Finance (Pay Cell) Department, dated 22.7.2013 and the consequential recovery proceedings cannot be given effect to. In such view of the matter, no further adjudication is required in all these Writ Petitions. The submissions of the learned Government Advocate for the State and the GO.Ms.No.306, Finance (CMRC) department, dated 12.09.2018 are recorded.

9.With the above observations, these Writ Petitions are disposed of. No costs.



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Consequently, the connected MPs are closed."

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16.4 In *Government of Tamil Nadu Rep by its Secretary, Finance (Pay Cell) Department and others v N.Rajendran* [W.A.No.2168 of 2021 dated 02.09.2021], the Division Bench of this Court, held as follows:-

"6. The sum and substance of the case on hand is that the pay scale of the Respondent has been erroneously fixed, thereby wrong amount was paid to the employee. Thereafter, the same was ordered to be recovered and questioning the same, the Writ Petition in W.P.No.11999 of 2013 was filed, in which the learned Single Judge held that in the absence of any fraud or misrepresentation on the part of the employee, the excess amount granted should not be recovered.

7. Though the contention of the learned Government Advocate, appears to be sound at the first blush, a cursory look at the order dated 28/8/2003 shows that admittedly, it is a non speaking order, with regard to wrong fixation of pay to the vocational teachers. In the proceedings of the Sixth Respondent dated 28.03.2013, it has been simply stated that the pay scale, which is revised as 15600~39100+5400 is hereby cancelled and they have decided to refix the pay scale of 9300~34800+4600. . Though the Government is entitled to recover the amount based on the guidelines pronounced by the Apex Court, no speaking order has been passed with respect to recovery of the salary fixed on 14.10.2011 in the Impugned Order dated 28.03.2000. Therefore, in the absence of speaking order being passed, we are of the view that the learned Judge was right in holding that there is no fraud or misappropriation on the part of the employee and that, the excess amount paid cannot be recovered."



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17. The ratio laid down in the aforementioned judgments are directly applicable to the facts of this case. It had been very categorically held that ordering of recovery of excess amount from the petitioners therein from 01.01.2011 to 31.03.2013 cannot withstand the scrutiny of the Court and, therefore, has to be set aside.

18. In view of the consistent dictum laid down by the learned Single Judges and also by the Division Bench of this Court, it is only obligatory on the part of this Court to follow the same dictum.

19. The counter affidavit of the sixth respondent protects the recovery from 01.04.2013 after a proposal is sent by the Headmaster / fifth respondent and the ratio laid above protects recovery between 01.01.2011 and 31.03.2013 also.

20. In view of the same, the writ petition stands allowed. No costs. Connected miscellaneous petitions are closed. A direction is issued to the fifth respondent to propose the revision of pay as directed by the sixth respondent within twelve weeks from the date



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of receipt of a copy of this order and thereafter necessary proceedings must be issued by the respondents within a period of four weeks from that date. The notice for recovery from 01.11.2011 onwards has been set aside by this Court and, therefore, there cannot be any recovery against the petitioner. No costs. Connected miscellaneous petitions are closed.

27.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

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Government of Tamil Nadu, School Education Department,
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C.V.KARTHIKEYAN,J.

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