



W.P.No.27398 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.27398 of 2017
and
W.M.P.No.29299 of 2017

1.P.Krishnasamy (deceased)

2.Indhirani

3.Sathiyamarayanan

4.Anandhi

5.Gayathri

*(P2 to P5 substituted as LRs of deceased
1st petitioner vide order dated 04.01.2023
made in W.M.P.No.32867 of 2022 in
W.P.No.27398 of 2017)*

...Petitioners

-Vs-

1.The Branch Officer,
O/o the Principal Accountant General (A&E),
Teynampet, Chennai - 600 018.

2.The Director,
Directorate of College Education,
Chennai - 600 006.



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3.The Principal,
Periyar E.V.Ra. College,
Trichirapalli.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent relating to order in Pro.Na.Ka.No.1539/E/2010 dated 10.08.2017 and the proceedings of the first respondent issued in Letter No.P09/4/10915024/ADK dated 17.02.2017 to quash the same and to consequently direct the respondents herein to forthwith restore his Selection Grade and Special Grade scale of pay in the post of Mechanic Grade I and to refund the amount recovered from the petitioner till date.

For Petitioners : Mr.M.Ravi

For R1 : Mrs.T.S.Selvarani
Standing Counsel

For R2 : Mr.M.Shahjahan,
Special Government Pleader

For R3 : No Appearance



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ORDER

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2. The prayer in the present writ petition is to a challenge of the order passed by the third respondent dated 10.08.2017, as well as the consequential order passed by the first respondent dated 17.02.2017, wherein he had sought for recovery of the excess amount paid in the Special Grade scale of pay to the late employee in the post of Mechanic Grade-I.

3. Through the proposal dated 17.02.2017, the first respondent herein had informed the third respondent that the employee would be eligible for Selection Grade to Mechanic Grade-I post with effect from 25.08.1996, but was awarded Special Grade to Mechanic Grade-I with effect from 27.06.1989 in the scale of Rs.1640-60-2600-75-2900 and therefore, proposed for rectification and revision of the service register of the employee. Consequently, the third respondent herein, through the impugned order dated 10.08.2017, had stated that since the employee was drawing a pay at the scale of pay of Rs.4500+210PP+30PP in the scale of pay of Rs.4000-100-



6000 on the date of retirement and since it was less than the grade pay of Rs.5200/- in the post of Junior Mechanic Special Grade, the question of revised fixation of pay will not arise. However, in the same order, recovery of the excess amount paid was directed.

4. The Hon'ble Supreme Court, in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***, has categorically held that recovery from a pensioner for wrong payments made, owing to the mistake of the department for a period exceeding 5 years, is impermissible in law. The relevant portion of the order reads as follows:-

"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 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 (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(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.

(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. Since the recovery is sought to be made from a retired employee, after about 31 years, and the excess payment is not owing to the fault of the employee, such a recovery is impermissible in law, in line with the ratio laid



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down in *White Washer's case (supra)*.

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6. In the light of the above findings, the impugned orders dated 17.02.2017 and 10.08.2017 are quashed. In case any recovery has been made, pursuant to the impugned order dated 10.08.2017, the same shall be refunded to the petitioners 2 to 5 herein, who are the legal heirs of the deceased first petitioner, together with interest at the rate of 6% per annum, within a period of four (4) weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.01.2023

Index:Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
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To
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M.S.RAMESH,J.

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