



W.P.No.34928 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.34928 of 2019 &
W.M.P. No.35711 of 2019

A.Sugumaaran

... Petitioner

Vs.

1. The Principal Secretary to Government,
Co-operation Food and Consumer Protection Department,
Secretariat, Chennai – 600 009
2. The Secretary to Government,
Co-operation Food and Consumer Protection Department,
Secretariat, Chennai – 600009
3. The Registrar,
Registrar Co-operative Society,
Kilpauk, Chennai – 600 010
4. The Additional Registrar of Co-operative Societies,
Chennai Region, St. Marry's Road,
Chennai – 600 018
5. The Director,
Audit of Milk Co-operation
212 Ramakrishna Math Road,
Tamilnadu Slum Clearance Board Building,
Chennai – 600 004

...Respondents

Writ Petition has been filed under Article 226 of Constitution of India



W.P.No.34928 of 2019

for an issuance of a Writ of Certiorarified Mandamus to call for the records in copy of government letter no.15296/cl2/2015-3 dated 03.02.2016 on the file of the 1st respondent revising the salary of the petitioner from the amount of Rs.9300-34800+4200 to Rs.5200-20200+GP2800 and to quash the same and consequently, direct the respondents to repay the recovered amount of Rs.3,48,646/- from recovering the excess pay and consequent payment of retiral benefit and pensionary benefit from the petitioner and to revise on the basis of last pay drawn on 30.04.2016 the date of superannuation.

For Petitioner : Dr.G.Krishnamurthy

For Respondents : Mr.T.M.Rajangam
Government Advocate

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records in copy of government letter no.15296/cl2/2015-3 dated 03.02.2016 on the file of the 1st respondent revising the salary of the petitioner from the amount of Rs.9300-34800+4200 to Rs.5200-20200+GP2800 and to quash the same and consequently, direct the respondent to repay the recovered amount of Rs.3,48,646/- from recovering the excess pay and consequent payment of

2/12



W.P.No.34928 of 2019

retiral benefit and pensionary benefit from the petitioner and to revise on the basis of last pay drawn on 30.04.2016 the date of superannuation.

2. The brief facts of the case is as follows:-

(i) The petitioner had studied PUC in the year 1979 and subsequently employed as Junior Assistant temporary employee under TNPSC during the period 1989-1990 and on 02.07.1997, the petitioner was appointed as junior assistant in Co-operative department. On 02.07.2007, the petitioner was promoted as Junior assistant selection grade and the petitioner was directed to undergo training as junior inspector.

(ii) On completion of training, vide order dated 12.07.2010, the petitioner was appointed as junior inspector and allotted to Chennai zone. From the date of joining of junior inspector, the petitioner's pay was brought under the category of Rs.9300-34800 + Grade pay 4200 in pursuance to the letter dated 08.11.2010. On 30.04.2016, the petitioner retired on superannuation and the last pay was Rs.13450+Grade pay Rs.4200/-. Further, vide impugned order dated 03.02.2016, letter no.15296/cl2/2015-3 on the file of the 1st respondent, the petitioner's pay scale was reduced to Rs.5200-20200 +GP2800, accordingly, there was a direction to recover



W.P.No.34928 of 2019

excess payment from the individual after issuing due notice.

WEB COPY

(iii) The 4th respondent vide letter dated 29.07.2016 refixed the pay of the petitioner as Rs.15,100/- and on 20.07.2016, the 4th respondent issued a show cause notice and since the petitioner was financially suffering and in emergent need for pension, the petitioner had given consent to recover the dues from the petitioner. Since the representations dated 22.02.2019, 06.03.2019 and 16.09.2019 have not been considered, the petitioner has come up with the present petition.

3. The learned counsel for the petitioner would submit that impugned order of reduction of pay is against the principles of natural justice and consequent recovery of the salary paid was against the dictum of Hon'ble Apex Court in White Wahser's case because the petitioner is C-grade employee. Further, the respondents, who normally claims no work no pay doctrine in the service matters, must also follow doctrine of satisfactorily worked for the payment paid.

4. The learned counsel for the petitioner would contend that how the earlier order dated 08.11.2010 on the file of 2nd respondent was incorrect



W.P.No.34928 of 2019

despite that the salary was fixed on the strength of one-man commission 2010 while revising the said pay scale vide impugned order, thereby pleaded to allow the present petition.

5. Resisting the contention of the learned counsel for the petitioner, a detailed counter affidavit has been filed by the respondents, wherein it is stated by the 1st respondent in his letter RC.No.15296/CL2/2015-3 dated 03.02.2016 that the junior inspector post is a promotional post to junior assistant, the higher scale of pay of Rs.9300-34800+G.P.4200, which was granted to one selection grade junior assistant is incorrect and his pay should be restricted to scale of pay of Rs.5200-20,200+G.P.2800, which is the pay applicable to the petitioner, therefore, a show cause notice was properly served to the petitioner and the petitioner responded and extended his willingness for re-fixation and to recover the excess amount from his retirement benefits. Consequently, proceedings were issued by the Director of Audit for Milk Cooperatives in Rc.No.1249/2016/B2 dated 17.08.2016, wherein the excess salary was ordered to be recovered.

6. The learned Government Advocate appearing for the respondents would further contend that the G.O.Ms.No.286 Finance (Pension)



W.P.No.34928 of 2019

Department dated 28.06.2018, referred by the petitioner is not applicable to the present case, inasmuch as the fixation done is not wrong, further the petitioner himself had given consent to recover the excess payment from the terminal benefits, thereby pleaded to dismiss the petition.

7. Heard the learned counsel on either side and perused the documents placed on record.

8. It is the contention of the learned counsel appearing for the petitioner that the legal issue in this Writ Petition is covered by the **decision of the Hon'ble Apex Court reported in (2015) 4 Supreme Court Cases 334 [State of Punjab and Others Vs. Rafiq Masif (White Washer) and others]**, wherein the Hon'ble Supreme Court has laid down certain guidelines where the recoveries made by the employers would be impermissible in law and the relevant paragraph, viz., Paragraph No.18, is extracted herein for ready reference:

“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



hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service)

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

(iii) Recovery from the 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.”

9. On going through the documents on record, it is seen that the petitioner in this case was an employee under the respondents and the petitioner was given monetary benefits in excess of his entitlement. The employer committed the mistake, which led to the excess payments. Upon realizing the error, the employer – respondents recovered the extra money



W.P.No.34928 of 2019

paid to the petitioner – employee.

WEB COPY

10. The main argument made on behalf of the petitioner is that the petitioner has not furnished any incorrect information or withheld any information, which would have caused the respondents to commit the mistake. The petitioner is being punished for an error that he did not cause in any way. Though the petitioner had given a consent letter for recovering the dues from the service benefits, however, reserved his right to prefer an appeal against the recovery order.

11. The main contention put forth on behalf of the respondents is that the petitioner was paid money, which was more than what he was entitled to and due to the unintentional mistake committed by the respondents, the petitioner/ employee was the recipient of monetary benefits beyond his due. Moreover, the petitioner himself has given a consent letter to recover the amount, which he is not entitled to, therefore, the respondents have the right to recover the extra, undeserved income that was paid to the employee – petitioner.



W.P.No.34928 of 2019

12. It cannot be forgotten that though the petitioner has given a consent letter to recover the dues from his service benefits, he reserved his rights to prefer an appeal against the said recovery.

13. At this juncture, it is relevant to note that extra money paid to the employees belonging to lower-income groups would most certainly be used to better the lives of the employees' family. Further, recovering the extra money from retired employees or employees, who were very close to retirement would cause immense harm to the employee, as he was no longer young and would have a variety of responsibilities and duties.

14. In the present case on hand, the petitioner would state that he falls under the category 'C' and the same is not refuted on the side of the respondents. That apart, though a consent letter has been given by the petitioner to recover the amount from the service benefits, he reserved his right to prefer an appeal against the recovery order. Moreover, the recovery has been ordered to be made on 03.02.2016, which is prior to two months of petitioner's retirement on superannuation, viz., 30.04.2016. That apart, the White Washer's case referred supra, squarely applies to the case in hand. Following the same decision and considering the factual position,



W.P.No.34928 of 2019

this Court has no hesitation to set aside the impugned order and accordingly, the impugned order is quashed and the Writ Petition is allowed and the respondents are directed to repay the recovered amount and consequential payment of retiral benefits and pensionary benefits and accordingly revise the last pay drawn on 30.04.2016, according to the Rules and Regulations, if there is no legal impediment. No costs. Consequently, connected miscellaneous petition is closed.

19.12.2023

Index : Yes/No; Internet : Yes/No
Speaking order / non speaking order
ssd

To

1. The Principal Secretary to Government,
Co-operation Food and Consumer Protection Department,
Secretariat, Chennai – 600 009
2. The Secretary to Government,
Co-operation Food and Consumer Protection Department,
Secretariat, Chennai – 600009
3. The Registrar,
Registrar Co-operative Society,
Kilpauk, Chennai – 600 010
4. The Additional Registrar of Co-operative Societies,
Chennai Region, St. Marry's Road,
Chennai – 600 018
5. The Director,

10/12



W.P.No.34928 of 2019

Audit of Milk Co-operation
212 Ramakrishna Math Road,
Tamilnadu Slum Clearance Board Building,
Chennai – 600 004

WEB COPY

V.BHAVANI SUBBAROYAN, J.,

ssd



WEB COPY



W.P.No.34928 of 2019

W.P.No.34928 of 2019

19.12.2023