



W.P.(MD).Nos.6813 to 6831, 6856, 6857, 6878 to 6896 and 7034 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.6813 to 6831, 6856, 6857, 6878 to 6896 and 7034 of 2023
and W.M.P(MD) Nos.6372 to 6375, 6378 to 6392,
6394, 6395, 6411, 6413, 6429 to 6445, 6447, 6448
12659 and 12877 of 2023

W.P.(MD)No.6813 of 2023:

S.Senthamil Selvan.

... Petitioner

Vs

The Joint Commissioner (ST),
Madurai State Tax Division,
Commercial Taxes Buildings,
Dr.Thangaraj Salai, K.K.Nagar, Madurai 625 020.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order of the respondent in Na.Ka.1378/2018/A3- V, dated 28.12.2022 and quash the same as illegal and unlawful.

For Petitioner : Mr.J.Pooventhera Rajan

For Respondents : Mr.N.Muthu Vijayan
Special Government Pleader



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COMMON ORDER

All the writ petitions have been filed seeking to quash the respective impugned orders of the respondent as illegal and unlawful.

2.Heard, Mr.J.Pooventhera Rajan, learned counsel appearing for the petitioners and Mr. N.Muthu Vijayan, learned Special Government Pleader appearing for the respondent. Perused the materials on record.

3(i).All the petitioners were appointed as Khadi Assistant Grade III in the Tamil Nadu Khadi Board. Later, the Khadi board became financially sick, as a result of which, the Government invited willingness from the employees of Khadi board to absorb them in other Government/Public Sector/Corporations/Autonomous bodies. Pursuant to the same, the Tamil Nadu Government issued Government order in G.O.Ms.No.154, Handloom, Handicrafts, Textiles and Khadi (F2) Department, dated 21.11.2009 framing guidelines for the absorption of the excess staff in the Khadi board to the other Government departments. In the said Government order it was stated that the excess staff of the Khadi board, who were absorbed in other departments will be treated as new appointments in the absorbed departments and they will be

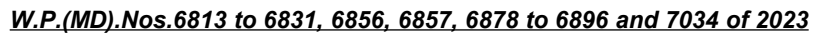


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provided with pay protection. However, service protection will not be applicable to them.

(ii).All the petitioners were already granted with Selection Grade in the cadre of Khadi Assistant on completion of 10 years of service, while they were in service in the Khadi board itself. In the meanwhile, since they were absorbed in the Department of respondent, thereafter, on completion of 20 years of service, including their earlier service along with the service rendered in the respondent Department calculating the periods altogether, Special Grade was also granted to all the petitioners.

(iii).Though they were not provided with service protection as per G.O.Ms.No.154 (Handloom, Handicrafts, Textiles and Khadi (F2) Department, dated 21.11.2009, subsequently the said G.O. was amended by issuance of G.O.Ms.No.152 (Handloom, Handicrafts, Textiles and Khadi (F2) Department, dated 12.07.2012, wherein, in addition to pay protection service protection was also conferred to the excess employees of the Khadi board, who were subsequently absorbed in the Government departments. By following the G.O.Ms.No.152 (Handloom, Handicrafts, Textiles and Khadi (F2) Department, the respondent Department granted Special Grade and also considered the case of the petitioners for providing them with service protection, as a result of which, the petitioners were included in the old pension scheme.



(iv).While so, the Secretary to Government, Handloom,

(v).Assailing the said order, the writ petitioners filed W.P(MD)No.

4.The respondent filed counter along with vacate stay petitions in



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5.The learned Special Government Pleader submitted that the petitioners are not entitled to Special Grade as per G.O.Ms.No.154, Handloom, Handicrafts, Textiles and Khadi (F2) Department, dated 21.11.2009, since they were granted only with pay protection. Further submitted that as per G.O., the persons who were absorbed shall be treated as new appointments in the absorbed Department and they would only be provided with pay protection, not with service protection. However, the petitioners are provided with old pension scheme. On that basis, he pressed for dismissal of all the petitions.

6.This matter is no more *res-integra*. This Court in W.P.(MD)No. 4976 of 2020 had dealt with a similar case and has passed favourable orders to the petitioners therein and the relevant portion is extracted hereunder:

“8. The facts in the present case are not in dispute. Admittedly, the petitioner was appointed as Khadi Assistant Grade-III in Khadi Board and thereafter, the petitioner found as excess staff in Khadi Board, thereby totally she was absorbed in other Government department. While she was working in the respondent department, she was awarded with Selection Grade and Special Grade on completion of 10 years and 20 years service, respectively. That the incentive increment sought to be recovered subsequently, on the ground that the



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service rendered in the Khadi Board, is not eligible to get benefits in the respondent department, thereby, the present recovery order was passed. Though there is no violation of principles of natural justice, the present recovery order is passed after hearing the petitioner. However, the similar issue came up for consideration before the Hon'ble Apex Court, wherein, the Apex Court held that in the absence of any misrepresentation, if any benefits granted to the clause 3 and 4 employees cannot be sought to be recovered subsequently, at a later point of time. 9. In the decision of the Hon'ble Supreme Court rendered in the case of State of Punjab and others Vs. Rafik Masih (White Washer) and others reported in 2015(4) SCC-334 and referred paragraph No.12, wherein, it was held as follows :

"12. 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



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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."

10. In view of the settled proposition of law laid down by the Hon'ble Apex Court, the Recovery proceedings, initiated by the respondents is not sustainable, and accordingly, the present impugned order is quashed.



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7.I am fully in consonance with the order passed by this Court as discussed supra. Even in the instant case, all the petitioners are Grade III employees. As mandated by the famous precedent in the White Washer's case, the recovery from employees of Grade III or Group C/D service is impermissible in law.

8.That apart, this Court in W.P.(MD)No.2560 of 2018 has passed a clear and elaborate order by quashing the clarification letter issued in the aforesaid writ petition, dated 19.12.2017, by which, the Secretary to Government directed all the Heads of Department to cancel the Special Grade granted to the petitioners, who were absorbed from Khadi board along with recovery orders as illegal. This Court in the aforesaid case directed the authorities to pass orders afresh after hearing the petitioners, in light of G.O.Ms.No.154, Handloom, Handicrafts, Textiles and Khadi (F2) Department, dated 21.11.2009 and G.O.Ms.No.152, Handloom, Handicrafts, Textiles and Khadi (F2) Department, dated 12.07.2012. No doubt, G.O.Ms.No.152, Handloom, Handicrafts, Textiles and Khadi (F2) Department, dated 12.07.2012 was issued only for the purpose of amending the G.O.Ms.No.154, Handloom, Handicrafts, Textiles and Khadi (F2) Department, dated 21.11.2009 exclusively for granting service protection to all Grade III employees, who were absorbed



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from the Khadi Board to various departments. There is no cloud in the direction given by this Court in W.P.(MD)No.2560 of 2018.

9.In these circumstances, the respondent ought not to have issued rejected the claim of the petitioners, by reiterating the contentions of the letter circulated by Secretary to Government, dated 19.12.2017, which was already quashed by this Court.

10.In view of the above facts, this Court hereby quash the respective impugned orders passed by the respondent against each of the petitioners as illegal, thereby, all the writ petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To
The Joint Commissioner (ST),
Madurai State Tax Division,
Commercial Taxes Buildings,
Dr.Thangaraj Salai, K.K.Nagar, Madurai 625 020.



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L.VICTORIA GOWRI, J.

PNM

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