



WEB COPY



W.P.Nos.775, 2507, 2510, 2513, 2514, 2617, 2625, 3791, 3797, 3802 & 3807 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.12.2023
Pronounced on	05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.775, 2507, 2510, 2513, 2514,
2617, 2625, 3791, 3797, 3802 & 3807 of 2023

and

W.M.P.Nos.724, 726, 2604, 2606, 2607, 2608, 2609, 2611, 2612, 2613,
2683, 2684, 2692, 2693, 3858, 3862, 3865, 3866, 3871, 3872, 3875 &
3876 of 2023

W.P.No.775 of 2023

C.Angusamy

...Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. by its Secretary to Government,
Finance (PC) Department,
Fort St. George, Chennai – 600 009.

2.Tamil Nadu Pollution Control Board,
Rep. by its Member Secretary,
No.76, Anna Salai, Guindy,
Chennai – 600 032.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Certiorarified Mandamus, calling for the records relating
to proceedings bearing Letter No.TNPCB/Per/P3/007741/2022 dated
02.12.2022 and Letter No.TNPCB/Per/P3/007741/2022 dated 08.12.2022



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on the files of the 2nd respondent and quash the same and consequently direct the 2nd respondent to refund the same and consequently direct the 2nd respondent to refund the sum of Rs.45,045/- recovered from the petitioner.

(in all WPs)

For Petitioners : Ms.Rita Chandrasekar
for M/s.Aiyar & Dolia

For R1 : Mrs.V.Yamuna Devi,
Special Government Pleader

For R2 : Mr.S.Silambanan,
Additional Advocate General
assisted by
Ms.Vijayakumari Natarajan, Standing Counsel

COMMON ORDER

With the consent of both the parties, all these Writ Petitions were heard together and accordingly, the following common order is passed.

2. Heard Ms.Rita Chandrasekar, learned counsel appearing for the petitioner, Mrs.V.Yamuna Devi, learned Special Government Pleader appearing for the 1st respondent and Mr.S.Silambanan, learned Additional Advocate General appearing on behalf of the 2nd respondent.

3. In all these Writ Petitions, the petitioners were appointed as



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Drivers between the years 1984 and 1989 and on completion of 10 years and 20 years of their services, they were granted selection grade and special grade pay scales. Through orders passed by this Court in W.P.No.27313 of 2010, dated 28.02.2011, the Tamil Nadu Pollution Control Board (hereinafter referred to as 'the Board') was directed to re-fix the pay scales of the Drivers, in accordance with Schedule-II of the Tamil Nadu Revised Scales of Pay Rules, 1988, in the selection grade and special grade scales of pay, by adopting the scale of Rs.5,000-150-8,000/- and Rs.5,500-175-9,000/- respectively. The order of this Court came to be implemented by the Board through their proceedings dated 15.03.2012. Thereafter, the petitioners have retired from their respective services between the years 2013 and 2019 and were drawing pension on their respective revised pay scales.

4. Through a communication dated 05.02.2021, the Board had placed reliance on an order of the Hon'ble Supreme Court in Civil Appeal Nos.9533 to 9537 of 2019 and batch, dated 18.12.2019 and by re-fixing the pay scales of the petitioners, had sought for recovery of the excess pension paid in one lump sum. This proceedings dated 05.02.2021 was challenged by one of the petitioners before this Court in W.P.No.7611 of



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2022 and by an order dated 27.06.2022, the said proceedings was set aside and the Board was directed to issue a show cause notice on the contemplated recovery of the excess amount towards their pension benefits.

5. Accordingly, on 05.08.2022, the Board had issued a show cause notice to the petitioners to show cause as to why the excess amount should not be recovered from their pensionary benefits. This show cause notice was issued on the basis of the order passed by the Hon'ble Supreme Court in Civil Appeal Nos.9533 to 9537 of 2019 and batch, dated 18.12.2019, wherein fixation of ordinary grade, selection grade and special grade scales of pay were ordered, as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998. Though the petitioners herein had submitted their explanations to the show cause notice, the Board had deducted the pensionary benefits. Thereafter, through another communication dated 02.12.2022, the contemplated recovery by the Board was reiterated. This was followed by a subsequent communication dated 08.12.2022 for recovery of the excess payments of pension in monthly installments, by referring to the consent given by the petitioners by way of an undertaking at the time of revision of the selection grade and special



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grade scales of pay for recovery of the excess amount paid to them. These communications for recovery of the excess amount are put under challenge in the present Writ Petitions.

6. The learned counsel for the petitioners submitted that the benefit of selection grade and special grade was extended to the petitioners through an order passed by this Court in W.P.No.27313 of 2010, which has not been challenged by the Board and since the same has become final, the excess recovery cannot be made. She also submitted that the undertaking letter, referred to in the impugned communication order dated 08.12.2022, was given only with reference to S.L.P. (Civil) No.35969 of 2009, which is not connected with the earlier order passed by the Hon'ble Supreme Court in S.L.P.Nos.9560 & 9561 of 2019, dated 18.12.2019 and therefore, the recovery is impermissible. In this connection, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others*** reported in ***(2015) 4 SCC 334***.

7. Per contra, the learned Additional Advocate General appearing for



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the Board placed reliance on the averments made in the counter affidavit and submitted that the excess pay fixation was not due to the mistake of the Board, but pursuant to the order passed by this Court in W.P.No.22919 of 2010 and therefore, the decision in *White Washer's case* (*supra*) would not be applicable. He also placed reliance on the decision of the Hon'ble Supreme Court in the case of ***High Court of Punjab & Haryana and Others Vs. Jagdev Singh*** reported in (2016) 4 SCC 267 for the proposition that the petitioners have given an undertaking that any excess payments made during the fixation of the pay revision are liable to be adjusted or recovered.

8. I have given careful consideration to the submissions made by the respective counsels.

9. The two core issues that arise for consideration in these batch of Writ Petitions are as to whether the re-fixation of the pay scales of the Drivers was correct and if so, whether recovery of the excess payments made is permissible in law.

10. With regard to fixation of pay is concerned, the petitioners claim



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the benefit of selection grade and special grade scales of pay, in accordance with G.O.Ms.No.162, dated 13.04.1998. This fixation was the subject matter of a batch of Writ Petitions and with regard to the fixation extended to the petitioners, the same was a subject matter of S.L.P. (Civil) No.35969 of 2009, filed against the judgment passed in W.A.No.383 of 2009, which Special Leave Petition was dismissed on 25.02.2015 by the Supreme Court. Thus, the revised pay scales applicable to the petitioners herein have become final.

11. In the subsequent order passed in Civil Appeal Nos.9533 to 9537 of 2019 and batch, dated 18.12.2019, the Hon'ble Supreme had allowed the ordinary grade, selection grade and special grade scales of pay to the Drivers, as per G.O.Ms.No.162, dated 13.04.1998. In view of the same, the fixation of the pay scales, based on which the pension amount has been calculated, does not require interference.

12. The next question that arises for consideration is as to whether the excess payment made can be recovered with retrospective effect, by adversely affecting the interest of the petitioners herein.

13. The learned Additional Advocate General appearing on behalf of



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the Board had made a submission that all these petitioners had given an undertaking that they will abide by the final outcome of the Special Leave Petition filed by the Government with regard to re-fixation of pay in selection or special grade pay scales and in view of the undertaking, the Board will be well within their powers to recover the excess payment, in accordance with the law laid down in *Jagdev Singh's case (supra)*. I am not in agreement with such a submission. The undertakings given by each of these petitioners are to the effect that the re-fixation of pay in the selection grade/special grade of Drivers will be subject to the final outcome of the Special Leave Petition filed by the Government in S.L.P. (Civil) No.35969 of 2009. A sample of the undertaking given by one of the petitioners, is as follows:-

UNDERTAKING

*I Thiru. _____ S/o. _____
presently working as Driver at _____ hereby
undertake that in the event of refixing the pay in the
Selection Grade/Special Grade of Drivers based on
the directions of the Hon'ble High Court in
W.P.No.27313/2010 dated 28.2.2011, I will abide to
the final outcome of the SLP filed by the Government
with regard to relaxation of pay in Selection
Grade/Special Grade in the Hon'ble Supreme Court*



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of India in SLP C (No) 35969/2009 in favour of Government, if any, even I will repay the entire arrears amount paid by the board in one lumpsum.

Signature of the Driver

Name:

Designation:

Present Station:

14. The aforesaid undertaking is self explanatory, to the effect that the petitioners herein had agreed to repay the entire arrears, subject to the outcome of S.L.P. (Civil) No.35969 of 2009, which arose against the judgment passed in W.A.No.383 of 2009, against the order dated 28.02.2011 passed in W.P.No.27313 of 2010. Incidentally, the fixation made to the Drivers came to be upheld by the Supreme Court, when S.L.P. (Civil) No.35969 of 2009 came to be dismissed on 25.02.2015 and this fact has also been recorded in the subsequent order passed in Civil Appeal Nos.9533 to 9537 of 2019 and batch, dated 18.12.2019. In the order passed in Civil Appeal Nos.9533 to 9537 of 2019, though a reference has been made to the dismissal of S.L.P. (Civil) No.35969 of 2009, the concerned departments were not authorized to recover the excess amount paid, if any. When the undertaking was only to the limited extent of the



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final outcome in S.L.P. (Civil) No.35969 of 2009, wherein no orders have been passed for recovery of the excess amount paid to the petitioners, which is pursuant to the order passed by this Court in W.P.No.27313 of 2010, dated 28.02.2011 and which has also become final, seeking for recovery, on the basis of this undertaking, is misconceived.

15. It is no doubt true that in *Jagdev Singh's case (supra)*, it was held that when an undertaking is given by an employee at the time of the initial pay revision, such an employee was on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any. However, in the instant case, such an undertaking was never given to the Board by any of these employees at the time of revision of pay. But, on the other hand, the undertaking was limited to the final outcome of S.L.P. (Civil) No.35969 of 2009, which has already been dismissed on 25.02.2015.

16. In this background, it would be useful to refer to the decision of the Hon'ble Supreme Court in *White Washer's case (supra)*, on the permissibility of the respondents to recover the excess payments. In the said decision, the Hon'ble Supreme Court had summarized a few situations



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of hardship that may be faced by the employees on the issue of recovery and held to be impermissible in law. Among these situations, recovery from employees belonging to Class III and Class IV (Group C and Group D) service; recovery from retired employees or the employees who are due to retire within one years; 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; etc., are some of the situations which were held to be impermissible in law.

17. All these petitioners herein squarely fit into the aforesaid three situations, since they were all in Group-D service and had retired from their respective services, even prior to the recovery order and the recovery, which is now sought to be made, is for a pay fixation in excess of five years prior to the contemplated recovery. Thus, in view of the law laid down in *White Washer's case (supra)*, the impugned order, contemplating recovery of the excess payment, cannot be legally sustained.

18. For all the foregoing reasons, the impugned proceedings, dated 02.12.2022 and 08.12.2022, are quashed. Consequently, there shall be a direction to the Tamil Nadu Pollution Control Board to forthwith refund



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the recovered amount to the petitioners, that may have been made pursuant

to their proceedings dated 02.12.2022 or 08.12.2022, within a period of

two (2) weeks from the date of receipt of a copy of this order.

19. In the result, all the Writ Petitions stand allowed. Consequently, connected miscellaneous petitions are closed. No costs.

05.04.2024

Index:Yes

Neutral Citation:Yes

Speaking order

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Finance (PC) Department,
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- 2.Tamil Nadu Pollution Control Board,
Rep. by its Member Secretary,
No.76, Anna Salai, Guindy,
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M.S.RAMESH,J.

hvk

**PRE-DELIVERY ORDER MADE IN
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