



W.P.No.16574 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

W.P.No.16574 of 2011

and

M.P.Nos.1 of 2012 & 1 of 2011

1. R.Hari
S/o.M.Ramu

2. E.Prabhakar
S/o.Ellappan

...Petitioners

Vs

1. The State
Rep. by its Secretary to Government
Labour and Employment Department
Government of Tamil Nadu
Secretariat, Fort St.George
Chennai-600 009.

2. The District Employment Officer
Thiruvellore
Thiruvellore District - 602 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the order dated 19.02.2010 in proceedings No.A1/548/2010 of the 2nd respondent herein and quash the same.



W.P.No.16574 of 2011

For Petitioners : Mr.S.K.Rameshwar
For Respondents : Mr.Stalin Abhimanyu
Additional Government Pleader

ORDER

The petitioners have filed the present writ petition challenging the order of second respondent dated 19.02.2010 whereby, recovery was sought to be made on the ground that excess payments have been made to the petitioners.

2. It is the case of the petitioners that they are fully qualified to be appointed as Typists and they have also registered themselves in the Vellore District Employment Exchange. While so, the first respondent has issued G.O.Ms.No.72 dated 25.08.2006 sanctioning 81 posts of Typists, pursuant to which, Tamil Nadu Public Service Commission also instructed the Employment Exchanges to go in for direct recruitment from the qualified persons. Subsequently, G.O.Ms.No.185 dated 23.11.2006, was issued making correction in G.O.Ms.No.72 dated 25.08.2006 to the effect that the post of Typists and Steno Typists sanctioned under G.O.Ms.No.72 shall be filled up temporarily with a consolidated pay of



W.P.No.16574 of 2011

Rs.4,000/- per month till regular recruitment is made by the Tamil Nadu Public Service Commission, based on which the petitioners herein have been appointed on 05.02.2007 on consolidated pay of Rs.4,000/- per month.

3. The petitioners also sought for regularization of services and thereafter, approached this Court by way of writ petitions in W.P.Nos.17923 &17924 of 2010.

4. When the petitioners were drawing consolidated pay of Rs.4,000/- per month, the first respondent has issued G.O.Ms.No.234 dated 01.06.2009 based on the report of Official Committee constituted for revision of scales of pay. Based on the report, employees appointed temporarily on contract basis in the year 2003 shall be enhanced by 25% and consolidated pay was directed to be revised from Rs.4,000/- per month to Rs.5,000/- per month with effect from 01.01.2007. In view of the above Government Order, the same was given effect to the petitioners also and they have been paid with consolidated pay of Rs.5,000/- per month with effect from 01.01.2007.



W.P.No.16574 of 2011

WEB COPY

5. However, all of a sudden, by impugned proceedings dated 19.02.2010, the second respondent issued orders to recover the excess payment made to the petitioners on the ground that G.O.Ms.No.234 dated 01.06.2009 will be applicable only to persons who were appointed on consolidated basis in the year 2003 and it will be not applicable to petitioners on hand. However, prior to issuance of impugned order for effecting recovery of these amounts, the petitioners were not issued with any notice and no opportunity was provided to the petitioners when they were already making their livelihood by this meagre income of Rs.4,000/- based on consolidated pay. Assailing this proceedings, the petitioners have come up with the present writ petition.

6. Heard Mr.S.K.Rameshwar, learned counsel for the petitioners and Mr.Stalin Abhimanyu, learned Additional Government Pleader for respondents and perused the records.

7. Admittedly, the petitioners herein have been appointed on consolidated pay at Rs.4,000/- per month in view of G.O.Ms.No.185 dated 23.11.2006 and G.O.Ms.No.72 dated 25.08.2006 with effect from



W.P.No.16574 of 2011

WEB COPY

December 2006 onwards. While the petitioners have been working with the respondents by receiving the consolidated pay of Rs.4,000/- per month, in view of the subsequent orders passed by the first respondent in G.O.Ms.No.234 dated 01.06.2009, the respondents on their own had extended the benefit covered under this G.O to the petitioners by enhancing the consolidated pay by 25% i.e., from Rs.4,000/- per month to Rs.5,000/- per month with effect from 01.01.2007.

8. In view of the benefits granted by respondents by implementing G.O.Ms.No.234 dated 01.06.2009, the petitioners have been paid consolidated pay of Rs.5,000/- from 01.01.2007. However, the second respondent by impugned proceedings dated 19.02.2010, has sought to recover the amounts in the manner as annexed in the impugned order on the ground that the benefits that are provided under G.O.Ms.No.234 dated 01.06.2009, will enure only to the benefits of persons appointed on consolidated pay in the year 2003 and petitioners having been appointed subsequently will not be entitled to the benefit of this G.O. and therefore, the petitioners were directed to repay the excess payments on or before 31.03.2010. The relevant portion of the impugned order is extracted hereunder:



W.P.No.16574 of 2011

வரிசை சு எண்	பெயர்	பதவி	01.01.07லிருந் து திருத்திய ஊதியத் தொகை	இடைக்கா ல நிவாரணம்	06/09இலிருந்து 12/09 வரை ஊதிய உயர்வு	மொத்தம் (4+5+6)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	ஆர்.அரி	தற்காலிக தட்டச்சர்	<u>ரூ.7873/-</u>	<u>ரூ.4000/-</u>	<u>ரூ.6968/-</u>	<u>ரூ.18,841/-</u>
2.	ஈ.பிரபாகர்	தற்காலிக தட்டச்சர்	<u>ரூ.7495/-</u>	<u>ரூ.4000/-</u>	<u>ரூ.6450/-</u>	<u>ரூ.17,945/-</u>
3.	த.குமணன்	தற்காலிக தட்டச்சர்	<u>ரூ.5666/-</u>	<u>ரூ.4000/-</u>	<u>ரூ.6968/-</u>	ரூ.16,634/-

9. In the writ petition filed, impugned order dated 19.02.2010 has been stayed and therefore, the recovery has not been given effect to.

10. From the perusal of impugned order, it is seen that when the petitioners were working on consolidated pay of Rs.4,000/- per month, the respondents have extended the benefit covered under G.O.Ms.No.234 dated 01.06.2009 and enhanced the consolidated pay and paid the sum of Rs.5,000/- with effect from 01.01.2007. It was only based on their own understanding, the benefits were extended by the respondents to the petitioners. When the stand of the respondents is that the petitioners are not entitled to the benefit of this G.O.Ms.No.234 dated 01.06.2009 and if they decided to recover the excess amount paid to the



W.P.No.16574 of 2011

petitioners, then it is for the respondents to issue necessary notice to petitioners and afford them an opportunity of hearing before effecting any recovery of payment made by them.

11. It is seen that the petitioners are already paying consolidated pay of Rs.4,000/- per month and this enhanced benefit of Rs.5,000/- were paid from 01.01.2007 till the date of impugned order. Since the recovery is sought to be made in the impugned order without issuing any notice and affording any opportunity to the petitioners, the impugned order is liable to be quashed on the ground of violation of principles of natural justice.

12. It could also be seen that the petitioners, who are working on consolidated pay in the post of Typist come under Group C Employees and whether any payments made in excess on wrong calculation on the part of the respondents without any fault or misrepresentation on the part of the petitioners is impermissible in view of the decision of Hon'ble Supreme court in *State of Punjab and Others Vs. Rafiq Masih (White Washer) and others* reported in (2015) 4 SCC 334 as no recovery from



W.P.No.16574 of 2011

Group C and D employees is permissible. The respondents shall also take note of this aspect if they choose to initiate any fresh proceedings as against the petitioners for recovery of above amounts covered under impugned order.

13. In view of the same, Writ Petition is allowed and the impugned order dated 19.02.2010 passed by the second respondent is set aside. It is open to the respondents to issue notice and pass a fresh order after affording an opportunity of personal hearing to the petitioners, if they otherwise choose to do so. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

23.10.2024
(2/2)

Index: Yes / No
Speaking Order / Non-speaking order
Neutral Citation : Yes / No

mk



W.P.No.16574 of 2011

To
WEB COPY

1. The State
Rep. by its Secretary to Government
Labour and Employment Department
Government of Tamil Nadu
Secretariat, Fort St.George
Chennai-600 009.
2. The District Employment Officer
Thiruvellore
Thiruvellore District - 602 001.



WEB COPY



W.P.No.16574 of 2011

G.ARUL MURUGAN.J.,

mk

W.P.No.16574 of 2011

23.10.2024
(2/2)