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W.P.No.22802 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.22802 of 2015

and

W.M.P.No.4157 of 2016

K.Ram Mohan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Environmental & Forest Department,
Secretariat, Fort. St.George,
Chennai – 600 009.
2. The Additional Principal Chief Conservator of Forest (Admin),
Office of Principal Chief Conservator of Forests,
Panagal Building, Saidapet, Chennai – 600 015.
3. The State of Tamil Nadu,
Represented by its Secretary to Government,
Personnel & Administrative Reforms Department,
Secretariat, Fort St.George, Chennai – 600 009.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd respondent in proc. No.A2/6748/2014 dated 13.6.2014 and the subsequent proceedings issued by



the 2nd respondent in Se.Mu.A.No.A2/6748/2014 dated 12.2.2015 and to quash the same and consequently directing the respondents to restore the Selection Grade scale of pay in favour of the petitioner granted in the post of Assistant Conservator of Forest as per the proceedings of 2nd respondent in Proc.No.A2/ 55549/10 dated 15.4.2010.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondent : Mr.M.S.Prem Kumar,
Government Advocate

ORDER

When this matter earlier came up for consideration before this Court on 14.10.2024, the learned counsel for the petitioner contended that the issue involved in this writ petition is squarely covered by an order passed by this Court in W.P.Nos.12290 and 12292 of 2021 dated 21.02.2024 and also placed a copy of the said order before this Court.

2. Today, when the matter is taken up for consideration, Mr.M.S.Prem Kumar, learned Government Advocate appearing for the respondents fairly submitted that the issue is squarely covered by the said order dated 21.02.2024. However, sought time to verify as to whether any writ appeal has been filed against the said order dated 21.02.2024. However, this Court is not



inclined to adjourn the matter, as it is conceded that the issue is already covered by an order passed by this Court.

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3. In the said order dated 21.02.2024, the learned Judge held as under:-

“10. When a benefit is given by taking into consideration of the long stagnation in one post without further promotion to the next post, the same has to be given to all those who are similarly placed and hence, the letter dated 09.08.2011 cannot be misconstrued by the 4th respondent authority. And further, in the letter dated 14.05.2012 by the government, it is further clarified that those persons who are due to be awarded selection grade and special grade in the higher selection grade during the period between 01.01.2006 and 31.05.2009, the effect will be given from 01.06.2009 instead of 01.01.2006.

11. Both the petitioners have been given effect of the selection grade benefit in their first level promotion after 01.06.2009 only. But the impugned orders have been issued due to oversight and without taking into consideration of the entire proceedings and clarifications given in this regard. Hence the order passed by cancelling the award of selection grade / special grade to the petitioners in their promotional post are liable to be set-



aside. The 4th respondent has also issued an order for recovery of the above proceedings which are also liable to be set aside, because the basic order itself is found to be illegal and is liable to be quashed.

12. Even for any extraneous reasons, it is presumed that the recovery is not on a legally sustainable order, the recovery cannot be made as against the petitioners who have already retired from service.

13. The position of law on this point has already been well settled by the judgment 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 Supreme Court Cases 334], wherein it is held as under and the petitioners fit in under 2nd category:

"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



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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 Ty 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."



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14. But in the instant case, the petitioners, even without the aid of the preposition laid in the 'white washer case'. Because the cancellation of awarding of selection grade in their higher post itself is proved to be illegal. Subsequent to the order of the Hon'ble Supreme Court made in 'White Washer case, a Government Order has been issued in G.O.Ms.No.286 dated 28.08.2018. The recovery order is completely in violation of the above said government Order also. Therefore the petitioners are entitled to get the refund of the recovery so far made in connection with the alleged excess payment of salary made to the petitioners. This clarity in the relief is given in view of the fact that recovery appears to have been made as against one of the petitioners on the verge of his retirement.

15. In view of the above stated reasons, these Writ Petitions are allowed. The impugned orders passed by the 4th respondent in Che.Mu.No.3655/14/Pa dated 16.03.2016 and the impugned Proceedings issued by the 3rd respondent in Proc.No.AA1/19690/2015 dated 17.07.2015 and the consequential impugned order of 4th respondent in Che.Mu.No.8864/2014/Po2 dated 22.07.2015 are all quashed and the respondents are



directed to refund the sum of any recovered so far and restore the original fixation of pay and pass orders within a period of six weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.”

4. In the light of the above and for the reasons already assigned in the said order dated 21.02.2024, this writ petition is also allowed and the impugned orders bearing Proc.No.A2/6748/2014 dated 13.06.2014 and செ.மு.ஆ.எண்.அ2/6748/2014 dated 12.02.2015 are quashed and the respondents are directed to refund the amounts, if any recovered, pursuant to the impugned orders and restore the original fixation of pay and pass orders within a period of six weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Connected miscellaneous petitions, if any shall stand closed.

15.10.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



To

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1. The Principal Secretary to Government of Tamil Nadu,
Environmental & Forest Department,
Secretariat, Fort. St.George,
Chennai – 600 009.
2. The Additional Principal Chief Conservator of Forest (Admin),
Office of Principal Chief Conservator of Forests,
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MUMMINENI SUDHEER KUMAR, J.

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