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WP.No.4210 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.4210 of 2020

K.Rajasekaran

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Petitioner

Vs.

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

2. The Commissioner of Agriculture,
Chepauk, Chennai- 600 005.

3. The Joint Director of Agriculture,
Cuddalore District,
Cuddalore.

4. The Principal Accountant General,
Office at DMS Compound
Teynampet, Chennai- 600 018.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in his proceedings No. A2/2369 dated 20.06.2019 and quash the same



and consequentially directing the 3rd respondent to return the sum of Rs. 2,42,668/- recovered from the petitioner and restore him in the special grade from 26.10.2007 and grant him super special grade from 2017 and re-fix his pension and terminal benefits based on his last drawn pay.

For Petitioner : Mr.C.Vighneswaran for
AMI V.Kataria
For Respondents : Mr.T.Cheziyen,
Addl.Government Pleader for RR1 to 3.
: Mr. Vijayashankar for R4

ORDER

The petitioner has filed this Writ Petition challenging the proceedings of the 3rd respondent dated 20.06.2019 in proceedings No.A2/2369 and to direct the 3rd respondent to return the sum of Rs.2,42,668/- recovered from the petitioner, restore him to the special grade from 26.10.2007 and grant him the super special grade from 2017 and re-fix his pension and terminal benefits based on his last drawn pay.

2.Heard, Mr.C.Vighneswaran, learned counsel for the petitioner, Mr.T.Cheziyen, learned Additional Government Pleader for respondents 1 to 3 and Mr.Vijayashankar, learned counsel for the 4th respondent and perused the materials available on record.



3. Mr.C.Vighneswaran, the learned counsel for the petitioner submitted that the petitioner was originally appointed as a typist in Tamil Nadu Co-Operative Oil Seeds Growers Federation Limited (hereinafter referred to as TANCOF) in the year 1987 and thereafter his probation was declared in the year 1988. The petitioner was given with selection grade of pay vide proceedings dated 15.03.2022 with effect from 26.10.1997 and thereafter, he was given with special grade of pay from 26.10.2007. However, before 10 days of his retirement, the impugned order was issued for recovery by stating that excess payment was given to the petitioner in contrary to the G.O. Ms. No. 142 dated 04.06.2002.

4. The learned counsels for respondents 1 to 3 and 4 have submitted that as per the above G.O.Ms.No.142 dated 04.06.2002, the petitioner's appointment has to be construed subsequent to his absorption, which came into effect on 01.04.2002.

5. So according to the submission of the learned counsels for respondents 1 to 3 and 4, the selection grade pay itself ought to have been given to the petitioner with effect from 01.04.2012 and not any time earlier. The petitioner was originally employee of TANCOF and the same was wound up. In view of the same, the employees of TANCOF have been absorbed into the Agricultural



department and in their appointment, it is clearly stated that their appointment will be considered a new appointment and hence, the petitioner cannot claim the benefits pertaining to the period prior to April 1, 2002. But the petitioner belongs to group IV service and the excess payment was not made for any wrongful act or omission on the part of the petitioner.

6. Mr.T.Cheziyen, learned Additional Government Pleader for respondents 1 to 3 submitted that since the petitioner is not eligible to count his earlier service for the purpose of appointment by absorption, his rightful selection grade of pay will relate back to 01.04.2012. So, it is submitted that the excess payment that has been made was sought to be recovered by the impugned order.

7. The Hon'ble Supreme court has held in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** [reported in (2015) 4 Supreme Court Cases 334], has held that no recovery can be made from a retired employee if fixation of salary of any other monetary benefits was erroneously made not due to any mistake on the part of the employee. The relevant part of the judgement is extracted as under:"

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

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(i) Recovery from employees belonging to 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.”

8. The petitioner obviously belongs to Group-D category and hence, the above judgement is applicable to this case. 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. Hence, the recovery order of re-fixing the pay of the petitioner in the scale pay is completely in violation of the above said government Order. Therefore, the petitioner is entitled to get the



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refund of the recovery so far made in connection with the alleged excess payment of salary made to the petitioner.

9. Under such circumstances, no recovery order should be issued for any of the amount, even if it is considered to be an excess payment. Hence, I find it appropriate to set-aside the recovery order in his proceedings No.A2/2369 dated 20.06.2019 passed by the 3rd respondent.

10. In the result, this Writ Petition is **partly allowed** only in respect of setting aside the order of recovery. The impugned recovery order passed by the 3rd respondent in his proceedings No. A2/2369 dated 20.06.2019 is set-aside and 3rd respondent is directed to refund the sum of Rs. 2,42,668/- recovered from the petitioner. However, with regard to the second limb of prayer, it is for the respondents to consider the qualifying number of years of service for the purpose of pension in accordance with the rules governing the petitioner's appointment and shall pass appropriate orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes

Internet : Yes/No



Speaking/Non- Speaking
Neutral: Yes/No

jrs



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To

- 1- The Secretary to Government,
State of Tamil Nadu,
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R.N.MANJULA, J.
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