



WEB COPY



W.P.No.26109 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.26109 of 2015

&

M.P.No. 1 of 2015

M.Reginold

...Petitioner

Vs.

1.The Commissioner of Milk Production &
Dairy Development,
Madhavaram Milk Colony,
Chennai – 600 051.

2.The Managing Director,
Tamilnadu Co-operative Milk
Producer's Federation Limited,
Madhavaram Milk Colony,
Chennai – 600 051.

...Respondents

Prayer: Writ Petition is filed under Article 226 to issue a Writ of Certiorari, to call for the records of the 2nd respondent bearing Ref.No.4740/Pers.Estt.1/2004 dated 16.06.2015 and quash the same.



W.P.No.26109 of 2015

For Petitioner : Mr. K.S.Viswanathan
Senior Counsel
for Ms. T.Hemalatha

For Respondent1 : Mr. V.Jeevagiridharan
Additional Government Pleader

For Respondent 2 : Mr. R.Balaramesh.

ORDER

The petitioner seeks to quash the order passed by the 2nd respondent in his proceedings dated 16.06.2015 bearing Ref. No.4740/Pers.Estt.1/2004. The impugned order of the 2nd respondent seeks to recover the amounts that have been paid in excess to the petitioner based on audit objections. It would be necessary to allude to the facts for appreciating the grievances of the petitioner herein.

2. The petitioner is a retired General Manager of the respondent Federation. He initially joined in the Animal Husbandry Department in the year 1963. Thereafter, in the year 1973 he was deputed to the Tamil Nadu Dairy Development Corporation and later on to Tamil



Nadu cooperative Milk Producer's Federation. In the year 1983, the petitioner acted as a Manager (Milk Procurement) at Madurai and later he continued as a Managing Director in Tirunelveli District Cooperative Milk Producer's Union till the year 1987.

3. Thereafter, the petitioner worked as a Manager / Managing Director in various Cooperative Unions. Even though he was given higher responsibility as a Manager, he continued as a Deputy Manager. The petitioner was one of the senior most Deputy Managers officiating as a Manager since the year 1983, but he was regularised only from the year 1988.

4. The petitioner would submit that the Federation could not promote the petitioner and other employees who were functioning as Managing Directors (Incharge) or Managers (Incharge) due to pendency of cases relating to finalization of option in various courts, finally the Hon'ble Supreme Court of India pronounced its Judgement



relating to option issue in July 1994.

WEB COPY

5. The petitioner would submit that he ought to have been regularly promoted in the normal course as Manager (Milk Procurement) in as much as his name was already in the seniority list of eligible candidates and vacancies were available for the said post for regular promotion. The petitioner was asked to shoulder more duties and responsibilities in the post of Manager / Managing Director Milk Unions by the 2nd respondent for more than 13 years by paying him a salary of a Deputy Manager.

6. The 2nd respondent vide his proceedings dated 12.05.1995 had regularised the service of the petitioner retrospectively in the cadre of Manager drawing pay scale of Rs.3700 – 125 – 4700 – 150 – 5000 and the arrears of salary with effect from 01.06.1988 was also granted to the petitioner. However, while granting the same, an undertaking was also taken from the petitioner and the similarly placed persons



W.P.No.26109 of 2015

that the arrears of salary paid would be subject to recovery in the event of audit objections for the same.

7. Nearly 16 years after the arrears of salary were paid to the petitioner on the basis of a special audit report, the 2nd respondent had passed an order dated 06.04.2004 directing recovery of the arrears of salary paid for the period from 1988 to 1995 i.e., for the period when the petitioner was posted as a Managing Director till the date his services has been regularied by the 2nd respondent.

8. The petitioner had immediately challenged the recovery proceedings by filing W.P.No.16751 of 2004 and thereafter by order dated 29.08.2008 this Court directed that the recovery be treated as show cause notice and final order be passed by the respondents after giving opportunity to the petitioner.

9. In compliance of the above order dated 29.08.2008, the



W.P.No.26109 of 2015

petitioner had submitted his reply to the 2nd respondent. However, by an order dated 04.07.2009, the 2nd respondent confirmed the order of recovery from the petitioner. Therefore, the petitioner made a representation to the 1st respondent requesting him to drop the recovery proceedings.

10. Thereafter, the 2nd respondent has proceeded to pass the impugned order dated 16.06.2015 directing to remit arrears amount as directed in the earlier order dated 04.07.2009. A perusal of the impugned order clearly denotes the non-application of mind on the part of the 2nd respondent, the petitioner's objection has not even been taken into consideration. It is stated that the matter had been examined by the AR(A)C dated 17.12.2014 and the AR(A)C had directed action to be initiated as per the statutory arbitration under Section 90 of the TNSC Act, 1983, in respect of the individuals who were already drawn the terminal benefits. By virtue of the impugned order, the petitioner was also directed to remit the amount within a



W.P.No.26109 of 2015

period of 30 days from the date of receipt of the order.

WEB COPY

11. Challenging this order, the petitioner has filed the instant Writ Petition and obtained orders of stay.

12. Mr. K.S.Viswanathan, learned senior counsel appearing on behalf of the learned counsel for the petitioner would submit that the petitioner was posted as a Manager / Managing Director. He had fully qualified to hold the said post which is the next promotion post as per the rules of the respondent federation. The Rules prescribed that the persons who are working in the respondent federation for 5 years in a lower cadre becomes eligible for promotion to the next higher level post.

13. The learned senior counsel would also rely upon an earlier proceedings of the Finance Department dated 05.08.1985, wherein, clarification had been issued to the effect that where a higher post is



filled up by lower level officer, the lower level officer should be paid higher pay admissible to the higher post. The petitioner and the similarly placed persons have been similarly posted into the next higher level and therefore there is no ambiguity in the payment of the arrears and regularisation. The respondents have not considered the objections made by the petitioner before passing the impugned order.

14. The learned senior counsel would also rely upon the Judgement of the Hon'ble Supreme Court reported in **2015 (4) SCC 334 – State of Punjab and others Vs. Rafiq Masih (White Washer)**, with particular reference to Paragraph No.18. He would also submit that they could also not be de-promoted back to the earlier post since that post had also been filled up.

15. The learned senior counsel would also submit that the regularisation of the petitioner and the similarly placed persons has not been a hasty decision but a decision which had commenced with



W.P.No.26109 of 2015

the Personnel Committee meeting held on 08.05.1995, who after analysing the various aspects had recommended for regularisation.

This minutes were issued on 12.05.1995 and the regularisation order was also issued on the very same day.

16. Ultimately, the board which is the final authority in its meeting dated 22.06.1995 had ratified the action taken by the Personnel Committee and minutes to this effect had been issued on 10.07.1995 after which the regularisation order were issued to the parties concerned. Therefore, the audit objection is erroneous.

17. The respondent has filed a counter statement which primarily proceeds on the ground that the petitioner has himself given an undertaking that in the event of the audit objections, the arrears paid could be recovered. They would also seek to distinguish the



W.P.No.26109 of 2015

Judgement cited on by the petitioner by relying upon the Judgement reported in **2016 (14) SCC 267 – High Court of Punjab and Haryana and others Vs. Jagdev Singh.**

18. Heard the learned counsels and perused the records.

19. The records would show that by the order dated 12.05.1995, the petitioner's service had been regularised with effect from 01.06.1988 and the scale of pay in the cadre of Manager was also directed to be paid with retrospective effect. The audit objections however ignored the orders passed by the Personnel Committee in its meeting dated 08.05.1995 which has been ratified and approved by the board. Therefore, no anomaly is found in the appointment of the petitioner.



20. Further, the petitioner had superannuated nearly 19 years ago, at the time of filing of the Writ Petition. Therefore, the Judgement of the Hon'ble Supreme Court reported in **2015 (4) SCC 334 – State of Punjab and others Vs. Rafiq Masih (White Washer) and others**, would clearly apply to this case. The Hon'ble Supreme Court in paragraph no.18 has stated as follows:

“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 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.”*

21. Therefore, as per clause 18 (2) & 18 (4) supra, the recovery



W.P.No.26109 of 2013

initiated against the petitioner is impermissible and consequently the

Writ Petition is allowed and the impugned order is quashed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

13.06.2024

Index : Yes/No
Internet : Yes/No
kan

To

1.The Commissioner of Milk Production &
Dairy Development,
Madhavaram Milk Colony,
Chennai – 600 051.

2.The Managing Director,
Tamilnadu Co-operative Milk
Producer's Federation Limited,
Madhavaram Milk Colony,
Chennai – 600 051.



WEB COPY



W.P.No.26109 of 2015

P.T. ASHA, J,

kan



WEB COPY



W.P.No.26109 of 2015

W.P.No.26109 of 2015

13.06.2024