



W.P.No.29927 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.29927 of 2013 and
M.P.No.1 and 2 of 2013

V.Kirubakaran

... Petitioner

Vs

1.The Government of Tamil Nadu,
Rep. by Secretary to the Government,
Finance (Pay Cell) Department,
Fort St.George, Chennai 600 009.

2.The Secretary to the Government,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai 600 009.

3.The Director of School Education,
College Road, Chennai 600 006.

4.The Chief Educational Officer,
Tiruvannamalai District,
Tiruvannamalai.

5.The Headmaster,
Government Higher Secondary School,
Perungattur,
Tiruvannamalai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the fifth respondent in relation to the proceedings issued in Na. Ka. No. 115/2013 dated 01.10.2013 and quash the same and issue a



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consequential direction to the respondents to restore the selection grade scale of pay to the petitioner in pay band of Rs.15600-39100 + Grade pay Rs.5400, with effect from 01.01.2006 with monetary benefits from 01.01.2011 and to grant Special grade scale of pay with consequential benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mrs.P.Rajarajeswarai,
Government Advocate.

ORDER

The writ petition has been filed challenging the order of the fifth respondent dated 01.10.2013 and for a consequential direction the respondents to restore the Selection Grade scale of pay to the petitioner in the pay band of Rs.15600-39100 + Grade pay Rs.5400, with effect from 01.01.2006 along with monetary benefits from 01.01.2011 and to grant Special Grade scale of pay with consequential benefits.

2. Heard both sides and perused the material available on record.

3. The petitioner was initially appointed as a single part-time Vocational Instructor in Electrical Motor Rewinding on 01.08.1986, pursuant to the order of the fourth respondent dated 27.07.1986 at Government Boys Higher Secondary School in Perungattur. The petitioner was subsequently appointed as full-time Vocational Instructor



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in the same subject on a regular basis with effect from 16.10.1992, in the time scale of pay of Rs.1400-2600 which corresponds to the scale of pay of B.T. Assistant. The service in the post of Vocational Instructor Grade I was regularized, with effect from 16.10.1992, by the order of the Joint Director of School Education (Higher Secondary) dated 10.07.2007.

4. The probation of the petitioner was declared on 13.05.2008 with effect from 06.11.1994. Subsequently, the petitioner was awarded the Selection Grade scale of pay to the post of Vocational Instructor with effect from 05.11.2002, in the scale of pay of Rs.6500-10500, which is the Selection Grade scale for the post of B.T.Assistant in accordance with the recommendations of the official pay committee with effect from 01.01.1996. The Government, by G.O.Ms.No.6 dated 04.01.2000, had framed adhoc rules applicable to the post of Vocational Instructors for various subjects in Higher Secondary Schools, which also apply to Vocational Instructors like the petitioner. Further, the Government, by G.O.Ms.No.234 dated 01.06.2009, has introduced revised scale of pay for employees based on the recommendations of the official pay committee with effect from 01.01.2006. After considering the request of the employees, the Government had granted Selection and Special Grade scale of pay along with monetary benefits with effect from 01.01.2011. In



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light of these developments, Vocational Instructors including the petitioner are also entitled for the above Selection and Special Grade scales of pay. Based on the proceeding dated 02.08.2011, the Headmaster of the School has fixed the Selection Grade in the scale of pay of Rs.15600-39100+Grade pay of Rs.5400/- by fixing the petitioner's pay at Rs.22,460/- as on 01.01.2006. However, based on the audit objection, the fifth respondent, by proceedings dated 01.10.2013, has revised the Selection Grade scale of pay and sought to recover an excess payment of Rs.132810/- which has been paid. Challenging the order of re-fixation and the consequential recovery, the petitioner has filed the present writ petition.

5. The learned counsel for both the petitioner and the respondents in unison submitted that the issue raised in this writ petition is squarely covered by the order passed by this Court dated 27.07.2023 in W.P.No.17006 of 2017, in the case of *T.Namasivayam v. The Government of Tamil Nadu and others*. In the said writ petition, the learned Judge had considered the issue as to whether recovery for the period between 01.01.2011 and 31.03.2013, in respect of the grade pay fixed to the petitioner therein could be recovered. This Court has noted that the pay in question therein was not paid solely based on the



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representation of the petitioner but rather as a consequence of the letter of Government dated 08.11.2010, which granted monetary benefits from 01.01.2011. For ease of reference, the relevant portions of the order are extracted hereunder:

“16. The issue therefore now crystallizes to the recovery for the period between 01.01.2011 and 31.03.2013. It must be kept in mind that, the said pay to the petitioner herein was not on the basis of any representation made by the petitioner but consequent to a letter of the Government dated 08.11.2010 which granted monetary benefits from 01.01.2011 and fixed the pay notionally from 01.01.2006. This particular aspect had come to the consideration of the Courts and learned counsel for the petitioner had produced before this Court earlier judgments on this very aspect:-

16.1 In N.Rajendran and another v the Government of Tamil Nadu, Rep. By its Secretary and Others [W.P.Nos.11999 & 12000 of 2013 dated 23.10.2019], this Court held as follows:-

“3.However, by an order dated 28.03.2013, the pay was re-fixed and was revised to a lower level pay of Rs.9300/- with grade pay of Rs.4600/-. There was an order also to recover the excess amount paid to the petitioners from 01.01.2011. However, the Government passed G.O.Ms.No.306 Finance (CMPS) Department dated 12.09.2018, increasing the pay of the petitioners from 4600 to 5400 from 01.04.2013. The petitioners are therefore now faced with the recovery of excess amount which was paid to them from 01.01.2011 to 31.03.2013. It



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is well settled that if excess payment is made by the employer by applying wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, then, when such employees are asked to pay the excess amount they would be faced with hardship, when the amount is sought to be recovered from them and if there was no misrepresentation or fraud by the employee in grant of excess amount of pay, and it should not be recovered. The Hon'ble Supreme Court in Syd Abdul and Other .Vs. State of Bihar and Others reported in (2009) 3 SCC 475, as observed as under:

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of



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wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, Shyam Babu Verma vs. Union of India, Union of India vs. M. Bhaskar, V. Gangaram vs. Director, Col. B.J. Akkara [Retd.] v. Government of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh & and Bihar SEB v. Bijay Bhadur.”

4. In view of the above, the order for recovering the excess amount from the pay of the petitioner from 01.01.2011 to 31.03.2013 stands set aside. The Writ Petitions are disposed of on the above mentioned terms. No costs. Consequently, connected miscellaneous petitions are closed.”

16.2 In V.Sundararajan and another v the Government of Tamil Nadu, Rep. By its Secretary, Finance (Pay Cell) Department and others [W.P.Nos. 12787 & 12788 of 2013 dated 05.03.2020], this Court held as follows:-

“6. The relevant portion of the order of this court made in W.P.Nos.11999 and 12000 of 2013 dated 25.10.2019 reads as follows:- “4. In view of the above, the order for recovering the excess amount from the pay of the petitioner from 01.01.2011 to 31.03.2013 stands set aside. The writ petitions are disposed of on the above mentioned terms.”

7. Considering the fact that scale of pay for the Vocational Instructors was fixed at Rs.15600 - 39100 with grade pay of Rs.5400/- for no fault of the petitioners, but,



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however, the Government had subsequently recognized the anomaly and re fixed the grade pay and also on considering the fact that when the order for recovery was challenged by the similarly placed persons, this court by order dated 25.10.2019 set aside the order of recovery of excess amount paid, this court is inclined to set aside the order of recovery in respect of the petitioners also.

In the result, both writ petitions are allowed and the orders impugned in the writ petitions directing the recovery of the excess amount from the pay of the petitioners from 01.01.2011 to 31.03.2013 are set aside. Amounts, if any, already recovered from the petitioners are directed to be refunded to them within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MPs are closed.”

16.3 In V.Krishnan v The Government of Tamilnadu Rep. By its Secretary, Finance (Pay Cell) Department and others [W.P.No.2950 of 2014 etc batch dated 03.02.2020], this Court held as follows:-

“8.It is seen from the GO.Ms.No.306, Finance (CMRC) department, dated 12.09.2018 that the grievance of the Petitioners has been met out positively by the Respondent. Therefore, impugned GO.Ms.No.263 Finance (Pay Cell) Department, dated 22.7.2013 and the consequential recovery proceedings cannot be given effect to. In such view of the matter, no further adjudication is required in all these Writ Petitions. The submissions of the learned Government Advocate for the State and the



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GO.Ms.No.306, Finance (CMRC) department, dated 12.09.2018 are recorded.

9. With the above observations, these Writ Petitions are disposed of. No costs. Consequently, the connected MPs are closed.”

16.4 In Government of Tamil Nadu Rep by its Secretary, Finance (Pay Cell) Department and others v N.Rajendran [W.A.No.2168 of 2021 dated 02.09.2021], the Division Bench of this Court, held as follows:-

“6. The sum and substance of the case on hand is that the pay scale of the Respondent has been erroneously fixed, thereby wrong amount was paid to the employee. Thereafter, the same was ordered to be recovered and questioning the same, the Writ Petition in W.P.No.11999 of 2013 was filed, in which the learned Single Judge held that in the absence of any fraud or misrepresentation on the part of the employee, the excess amount granted should not be recovered.

7. Though the contention of the learned Government Advocate, appears to be sound at the first blush, a cursory look at the order dated 28/8/2003 shows that admittedly, it is a non speaking order, with regard to wrong fixation of pay to the vocational teachers. In the proceedings of the Sixth Respondent dated 28.03.2013, it has been simply stated that the pay scale, which is revised as 15600~39100+ 5400 is hereby cancelled and they have decided to refix the pay scale of 9300~34800+4600. . Though the Government is entitled to recover the amount based on the guidelines pronounced by the Apex Court, no



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speaking order has been passed with respect to recovery of the salary fixed on 14.10.2011 in the Impugned Order dated 28.03.2000. Therefore, in the absence of speaking order being passed, we are of the view that the learned Judge was right in holding that there is no fraud or misappropriation on the part of the employee and that, the excess amount paid cannot be recovered.”

17. The ratio laid down in the aforementioned judgments are directly applicable to the facts of this case. It had been very categorically held that ordering of recovery of excess amount from the petitioners therein from 01.01.2011 to 31.03.2013 cannot withstand the scrutiny of the Court and, therefore, has to be set aside.

18. In view of the consistent dictum laid down by the learned Single Judges and also by the Division Bench of this Court, it is only obligatory on the part of this Court to follow the same dictum. 19. The counter affidavit of the sixth respondent protects the recovery from 01.04.2013 after a proposal is sent by the Headmaster / fifth respondent and the ratio laid above protects recovery between 01.01.2011 and 31.03.2013 also.”

6. In light of the submissions made by the learned counsel for both the petitioner and the respondents and in view of the above said decision, which is squarely applicable to the facts of the present case, the order of recovery sought to be made against the petitioner cannot be sustained, hence, set aside.



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7. Resultantly, the writ petition stands allowed. A direction is issued to the fifth respondent to propose the revision of pay within twelve weeks from the date of receipt of a copy of this order and thereafter, necessary proceedings must be issued by the respondents within a period of four weeks from that date. The notice for recovery from 01.01.2011 onwards has been set aside by this Court and therefore, there shall be no recovery against the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

29.10.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
shk



WEB COPY

To

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G.ARUL MURUGAN, J.

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