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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.7777 of 2020 & 8080 of 2021
and W.M.P.Nos.9167, 9168, 9169, 9170 of 2020
and W.M.P.Nos.3535 & 8626 of 2021

W.P.No.7777 of 2020

1.T.Muthu Kumaran,
Assistant Manager,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

2.P.Anbulingam,
Assistant Manager,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

3.P.Umashankar.
Assistant Manager,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

4.T.Moorthy,
Assistant Manager,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

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Petitioners

versus



1. Union of India,
Rep. by its Secretary to Government,
Department of Fertilizers,
Ministry of Chemicals and Fertilizers,
Government of India,
Shastri Bhavan, New Delhi - 110 001.

2. The Chairman and Managing Director,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068

3. The General Manager - P & A,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

4. The Secretary,
Department of Personnel and Training,
Union of India,
New Delhi-110 001.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the impugned records of the overtime recovery proceedings dated 08.05.2020 in Ref: P&A/4.049/2020 issued by the 3rd respondent and quash the same, consequently forebear the respondents 2 & 3 from recovering any amount as overtime recovery or any other mode from the petitioners' salary.

For Petitioners	:	Mr.M.R.Jothimanian
For Respondent Nos.1 & 4	:	Mr.N.Ramesh Standing Panel Counsel
For Respondent Nos.2 & 3	:	Mrs.Rita Chandrasekaran for M/s.Aiyar & Dolia

W.P.No.8080 of 2021



1.G.Ravichandran,
E No.2392,
Assistant Manager,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

2.B.Selvakumar,
E No.2526,
Assistant Manager,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

3.D.Jawaharlal Nehru,
E No.2190,
Assistant Manager,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

4.V.S.Sridharan,
E No.2403,
Assistant Manager,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

5.Gayathri Ganesh,
E No.2341,
Assistant Manager,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

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Petitioners

versus

1.Union of India,
Rep. by its Secretary to Government,
Department of Fertilizers,
Ministry of Chemicals and Fertilizers,



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2.The Chairman and Managing Director,
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Manali, Chennai - 600 068.

3.The General Manager - P & A,
Madras Fertilizers Ltd.,
Manali, Chennai - 600 068.

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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 impugned order dated 26.02.2021 made in File No:HR/4.057/2021 passed by the 3rd respondent and quash the same, consequently forebear the respondents 2 & 3 from recovering or revising the scale of pay as recovery or any other mode from the petitioners.

For Petitioners : Mr.M.R.Jothimanian

For Respondent No.1 : Mrs.R.Durgarani
Central Government Standing Counsel

For Respondent Nos.2 & 3 : Mrs.Rita Chandrasekaran
for M/s.Aiyar & Dolia

COMMON ORDER

Since the issue involved in both the Writ Petitions is one and the same, these Writ Petitions were heard together and disposed by this common order.



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2. Heard Mr.M.R.Jothimanian, learned counsel for the petitioners and Mr.N.Ramesh, learned Standing Panel Counsel for the respondents 1 to 4, Mrs.R.Durgarani, learned Central Government Standing Counsel for the 1st respondent and Mrs.Rita Chandrasekaran, learned counsel for the respondents 2 and 3 and perused the materials available on record.

3. The petitioners (W.P.No.7777 of 2020) were appointed as Technical Assistants in the year 1990, 1992 and 1994 respectively and the petitioners (W.P.No.8080 of 2021) were appointed as Steno Clerks in the year 1989, 1991 and 1993 respectively. They have been working as E2 (Assistant Manager) with E-3 pay scale in the 2nd and 3rd respondent Company. The respondents 2 and 3 (Madras Fertilizers Limited) have got a stagnation benefit in their promotional policy. As per Clause 6.13 of the said policy, the employees in Grade-V with basic threshold qualification are being stagnated without promotion but that will be considered for sliding to E-1 pay scale on their completion of 8 years of service in Grade-V. However, they will continue to be non-supervisory employees. But their regularisation will be made whenever the vacancy arises in respect of 40% of the promotion quota. As one time measure, the employees joined with ITI



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qualification prior to 2009 will be given either sliding to E-1 pay scale on their completion of 8 years of service in Grade-V or they can opt for promotion from Grade-V to Grade-VI, or Grade-VI to Grade-VII as per the policy.

4. It appears that the petitioners have availed Clause **6.13(i)** of the promotional policy option and hence they were considered for sliding to E-1 pay scale. But it is submitted by Mr.N.Ramesh, learned Standing Panel Counsel for the respondents 1 to 4 that after the petitioners were regularised in E-1 position, they opted to sliding E-3 pay scale and they availed the benefit of E-3 monetary benefit as well. So it is claimed by the respondents that the petitioners are making double claim stagnation benefit in both the cadres of Grade-V to E-1 and then E-1 to E-3. Hence, the recovery proceedings have been initiated and recovery order has been issued by the 3rd respondent and that is the subject matter of challenge in these Writ Petitions.

5. Mr.M.R.Jothimanian, learned counsel for the petitioners submitted that the petitioners are eligible to get the benefit which has been



dealt by the Hon'ble Supreme Court in the case of *State of Punjab Vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334 and stated that the recovery has been initiated after 13, 15, 17 years without issuing prior notice to the petitioners and hence, it is illegal.

6. Mrs.Rita Chandrasekaran, learned counsel for the respondents 2 and 3 submitted that the petitioners have been given with the notice by giving them several options but the petitioners and similar others have also exercised their options of recovery.

7. Neither in the option notice nor in the recovery order, any details have been given on how the excess claim has been made by the petitioners in both the Grades (E-1 and E-3). By overtime recovery, what is meant is not the recovery of overtime wages. Overtime wages is paid to an employee for putting some extra hours of work beyond the prescribed working hours. But what is meant by the respondents in their impugned proceedings as overtime payment is some payments made to the employees over and above of their entitlement. However, neither the notices nor the



recovery proceedings give any breakups or details as to the nature of the excess payment and how the petitioners are disentitled to enjoy the same.

8. Only, if such particulars are furnished to the petitioners, it will be possible for them to make their representations effectively. The recovery has been initiated after a lapse of several years. The policy also does not make it clear whether the employees are entitled to only one time stagnation benefit to the next level by putting a minimum prescribed years of service in the lower Grade. Without framing a policy of stagnation to the effect of allowing it for only one time in the career of an employee, it cannot be stated that anything concrete about the disentitlement of an employee in availing the stagnation benefit. Hence the impugned order passed without reasons, is liable to be set aside.

In view of the above stated reasons, these Writ Petitions are **allowed** and the orders passed by the 3rd respondent dated 08.05.2020 and 26.02.2021 are set aside and the 3rd respondent is directed to frame their policy in respect of stagnation and the limits of its entitlement etc. In case, if the policy has already got provisions to that effect, the respondents shall issue



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fresh notice to the petitioners by giving all details now found to be missing and give reasonable opportunities to the petitioners to make their submissions and then pass appropriate orders within a period of six (6) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

22.02.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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R.N.MANJULA, J.



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