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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P Nos.12290 & 12292 of 2021

and

WMP.Nos.13069, 13070,13075 & 13076 of 2021

K.Elumalai ... Petitioner in WP.No.12290 of 2021

T.Bakthavatchalam ... Petitioner in WP.No.12292 of 2021

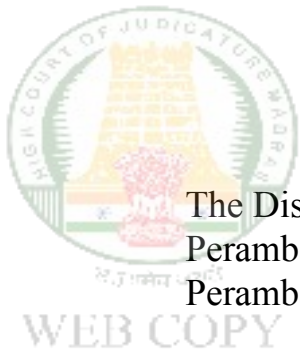
Vs.

The State of Tamil Nadu,
Rep. by its Principal Secretary
to Government, Environment and
Forest Department, Fort St. George,
Secretariat, Chennai 600 009.

The Principal Chief Conservator of Forests,
(Head of Department) Panagal Maaligai,
No.1, Jeenis Road, Saidapet,
Chennai 600 015.

The Additional Principal Chief Conservator
of Forests, (Administration) Panagal Maaligai,
No.1, Jeenis Road, Saidapet,
Chennai 600 015.

... Respondents 1 to 3 in both WPs.



W.P.Nos.12290 & 12292 of 2021

The District Forest Officer,
Perambalur District
Perambalur.

... 4th Respondent in WP.No,12290/2021

The conservator of Forests
Dharmapuri circle,
Dharmapuri.

... 4th Respondent in WP.No,12292/2021

Prayer in WP.No.12290/2021: Writ Petition 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 4th respondent in Che.Mu.No.3655/14/Pa dated 16.03.2016, and to QUASH the same and consequently direct the respondents to restore the Selection Grade scale of pay in the post of Assistant Conservator of Forests as granted in the order of 3rd respondent in Proc.No.A2/36657/10 dated 10.12.2010, with all consequential and other attendant benefits and to refund the recovered amount to the petitioner.

Prayer in WP.No.12292/2021: Writ Petition 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 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 and to QUASH the same and consequently direct the respondents to restore the Selection Grade scale of pay in the post of Assistant Conservator of Forests as granted in the order of 3rd respondent in Proc.No.A2/29584/10 dated 03.06.2010, with all consequential and other attendant benefits and to refund the recovered amount to the petitioner.



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In both WPs

For Petitioner : Mr.Maheshnath.A

For Respondents : Mr.S.Rajesh
Government Advocate [Forest]

COMMON ORDER

Heard, Mr.A.Maheshnath, learned counsel for the petitioner and Mr.S.Rajesh, learned Government Advocate [Forest] for the respondents 1 to 4 and perused the materials available on record.

2. The petitioners, who are beneficiaries of G.O.Ms.No.210 Personal and Administrative Reforms (PER-S) Department, dated 11.03.1987 and who have been subsequently served with the orders of recovery and re fixation, have filed these writ petitions challenging the same and seeking appropriate directions.

3. The petitioners were originally appointed as Forest Rangers in Tamil Nadu Forest Subordinate Service through Tamil Nadu Public Service Commission. Both the petitioners have been promoted on 05.11.2009 and



07.10.2009 respectively. Since the petitioners have completed 10 years of service even in their lower post, they were getting identical pay to the ordinary grade of higher post. Their services in selection grade of lower post was allowed to be counted for the selection grade in the promoted post in view of G.O.Ms.No.210 Personal and Administrative Reforms (PER-S) Department, dated 11.03.1987.

4. The above G.O. is extracted hereunder for a better appreciation:

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GOVERNMENT OF TAMIL NADU

ABSTRACT

PUBLIC SERVICES – Advancement to Selection Grade/Special Grade in various services- Recommendation of the one Man Committee- Accepted- Issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (PRM.S) DEPARTMENT
G.O.Ms. No.. 210

Dated: 11-3-1987

Read:-

G.O.Ma. No. 68, Personnel and Administrative Reforms (Per.M) Department, dated 23-1-1986.

ORDER:

The Government in their orders read above have inpued guidelines for advancement to Selection Grade/Special Grade in various categories, based on the recommendations of the Fourth Tamil Nadu Pay Commission. The One Man Committee hap now recommended as follows:-

"Services in the Selection Grade of the lover. post may also be counted for the Selection Grade in the promoted post provided the the Selection Grade scale of the lover post identical to the Ordinary Grade of the higher post, and that this concession may be allowed only at the first promotion level. This will mainly result in some pensionary benefits to these categories.



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In the case of posts with different grades, persons with 10 years or more of service may be advanced to Order-I and those with 20 years or more may be advanced to Selection Grade of Grade-I."

2. The Government after careful examination accept the recommendation of the One Man Committee and direct that the service in the Selection Grade of the lower post shall be counted for the Selection Grade in the promoted post provided that the Selection Grade scale of the lower post is identical to the Ordinary Grade of the higher post, and that the concession be allowed only at the first promotion level. Government also direct that in the case of posts with different grades one who has put in 10 years of more of service in the lower post (e.g. Grade-II) shall be advanced to the next higher post (i.e. Grade-I) under the scheme of Flexible Complementing and one with a service of 20 years or more be advanced to Selection Grade of the higher post (i.e. Grade-I) wherever it has already been provided.

3. These orders shall take notional effect from 1-10-1984 for the purpose of fixation of pay with monetary benefit from 1-4-1986.

/(By Order of the Governor)"

5. At the time when the above Government Order was issued, the above benefit was restricted to the first lower promotion alone. However, the Government has later clarified through a letter dated 28.09.1999 that such a benefit can be extended to any level but limited to only once in service period. However, the 4th respondent has passed the impugned orders on 10.12.2010 and 17.07.2015, 22.07.2015 and 16.03.2016 by stating that the selection grade awarded to the petitioners in the post of Assistant Conservator of Forest is cancelled and recovery order has also been issued vide the proceedings of the 4th respondent dated 16.03.2016. Aggrieved over that, the petitioners have filed these writ petitions.



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6. The learned counsel for the petitioners submitted that the petitioners, who have joined services in the year 1984 have completed 20 years of service at the time when they were given the first level promotion of Assistant Conservative of Forest. So the petitioners will be entitled to get the selection grade in their lower post on completion of 10 years of service. Since the petitioners have completed 20 years of service at the time when they got their first level promotion itself, they have got surplus 10 years from the selection grade post in the lower level. Since G.O.Ms.No.210 Personal and Administrative Reforms (PER-S) Department, dated 11.03.1987 permits the years of services completed by the employee in their selection grade of lower post to be included for the selection grade in the higher post, they are entitled to their surplus of 10 years.

7. In such case the petitioners are entitled to get their selection grade in the higher post on the very day when they got their promotion to the post of Assistant Conservative Forest. But the respondents got themselves misguided and by the impugned orders, the respondents cancelled the selection grade awarded to the petitioners in their promoted post of Assistant Conservative of Forest with effect from their date of getting their promotion.



8. A reference was made in the clarification letter of the Government issued on 09.08.2011 wherein it is stated that the earlier orders in G.O.Ms.210 and 168 cannot be made applicable in the revised scale of pay implemented with effect from 01.01.2006. By taking shelter under the said clarification letter, the impugned order has been passed by cancelling the selection grade awarded to the petitioners in their higher post. However, the 4th respondent had omitted to take note of the fact that the petitioners have not availed the benefit of G.O.Ms.No.210 Personal and Administrative Reforms (PER-S) Department, dated 11.03.1987 any time before the benefit was given to them. According to G.O.Ms.No. 210 Personal and Administrative Reforms (PER-S) Department, dated 11.03.1987, such a benefit can be awarded only once. When a Government Order has been issued granting certain entitlement, a government letter or circular cannot be issued to withdraw the same, without any rhyme or reason. Since the petitioner's entitlement itself falls after 01.01.2006, it cannot be construed that the petitioners had already enjoyed the benefit and hence the same benefit cannot be extended to them once the pay revision is implemented from 01.01.2006.

9. Even though the letter dated 09.08.2011 could have been issued by



rightly understanding the position and the benefit conferred vide G.O.Ms.No.210, dated 11.03.1987, the authorities have interpreted it in a such a way that there can be discrimination between two set of employees who have availed benefit of G.O.Ms.210, dated 11.03.1987 before 01.06.2006 but not after 01.01.2006.

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 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.



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(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."

14. But in the instant case, the petitioners, even without the aid of the proposition 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.

21.02.2024

Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs

To

The Principal Secretary
State of Tamil Nadu,
to Government, Environment and
Forest Department, Fort St. George,
Secretariat, Chennai 600 009.

The Principal Chief Conservator of Forests,
(Head of Department) Panagal Maaligai,
No.1, Jeenis Road, Saidapet,
Chennai 600 015.



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The Additional Principal Chief Conservator
of Forests, (Administration) Panagal Maaligai,
No.1, Jeenis Road, Saidapet,
Chennai 600 015.

R.N.MANJULA, J.
jrs

The District Forest Officer,
Perambalur District
Perambalur.

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