IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.Nos.9649, 9655, 9661, 9662, 9672, 9675, 9677, 9678, 9679, 9680, 9683, 9685, 9687 & 9690 of 2020

and

W.M.P.Nos.11772, 11776, 11779, 11781, 11790, 11792, 11796, 11799, 11800, 11803, 11804, 11809, 11810, 11812 of 2020

W.P. No.9649 of 2020

C.Amuthavalli ... Petitioner

Vs.

The Joint Commissioner (ST) (FAC),
Vellore State Tax Division,
Vellore. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order of the Respondent in நக.அ2/5090/2017-4 and quash the same.

For Petitioner : Mr.J.Pooventhera Rajan

For Respondent : Mr.Haja Nazrudeen
Additional Advocate General I
Assisted by Mrs.K.Vasanthamala
Government Advocate (Taxes)

COMMON ORDER

The Petitioners have filed these Writ Petitions seeking to quash the respective impugned orders, which cancelled the special grade pay given to the Petitioners and recover the grade pay already paid to these Petitioners.

2. Heard Mr.J.Pooventhera Rajan, learned counsel for the Petitioners and Mr.Haja Nazrudeen, learned Additional Advocate General-I for the Respondent.

3. The Petitioners were originally the staff of Khadi Board. Since 378 staff in Khadi Board were excessive, a decision was taken to retrench them. The Government has taken proactive measures and issued G.O.(Ms)No.154 (Handloom, handicrafts, Textiles and Khadi (F2) Department) dated 21.11.2009 by framing guidelines for absorption of excess staff from Khadi to other Government Departments. However, while issuing G.O.(Ms)No.154 (Handloom, handicrafts, Textiles and Khadi (F2) Department) dated 21.11.2009, it was made clear that the persons so absorbed in other Government Departments will be considered as new appointees and they will not get service benefits. However, they are entitled only for pay protection. But the benefit of said G.O., is not applicable to those who volunteered to retire under Voluntary Retirement Scheme. Subsequently, G.O.(Ms)No.152

(Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012 has been issued by considering their past services with the Khadi Board to be included for their pensionary benefits. In terms of G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012, the number of years of service of the Petitioners will be taken into account only for the purpose of pension and for awarding them any selection grade or special grade pay.

4. The case of these petitioners is similar to the dispute arose in a batch of Writ Petitions in W.P.Nos.1122 of 2020 etc. In the said Writ Petitions, this Court has passed the following order by referring '*White Washer's*' case:

> *"**15.** .... In paragraph 12 of the White Washer's case (State of Punjab and Others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334), the following summary has been given:*
>
> *"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 '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."*

5. By adopting the above guidelines in respect of recovery, this Court has passed the following order in W.P.Nos.1122 of 2020 etc.

> *"**16.** No doubt, the Petitioners who are working as Junior Assistants would fall under Class IV employees and some of them had retired from service and the recovery is sought to be made after five years. So the conditions (i) to (iii) are squarely applicable to facts of the case. However, in the case on hand, it is not excess payment but the payment*

due to be paid to the Petitioners, and hence it cannot even be considered as excess payment and hence no need to give the concession.

17. *Because there is a conceivable difference between concession and entitlement. The 'entitlement' represents a right which can be exercised or claimed and the concession in a relaxation or liberty given by someone at his discretion, and hence the receiver cannot have any control or claim over concession. What is being enjoyed by the Petitioners are only entitlement derived from G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012. Hence the impugned order issued for recovery of the payment already made and to stop making further payment is due to misinterpretation and misunderstanding of the scope of the above Government Order.*

18. *In view of the above stated reasons, the impugned orders in the respect Writ Petitions are set aside and these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed."*

6. The matter in issue is also similar to the earlier Writ Petitions filed in W.P.Nos.1122 of 2020 etc., batch, in which the above order has been passed. Since the petitioners are also similarly placed, their cases would also have the similar line of appreciation that was considered in the above Writ Petitions. Hence these petitioners are also entitled to the same relief as already granted to the other similarly placed persons in the earlier judicial orders.

R.N.MANJULA, J.

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7. Hence, these Writ Petitions are allowed and the impugned orders passed in the respective Writ Petitions are set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.02.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
gsk

To

The Joint Commissioner (ST) (FAC),
Vellore State Tax Division,
Vellore.

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