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W.P.No.10616 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

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THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.10616 of 2020

and

W.M.P. Nos. 12894 and 12898 of 2020

N.Krishnan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by Principal Secretary to Government,
Finance (PC) Department,
Secretariat,
Chennai – 600 009.

2. Tamil Nadu Pollution Control Board,
Represented by Member Secretary (i/c),
No. 76, Anna Salai,
Guindy, Chennai.

3. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Plot No. J2(W), Near SIPCOT Arch,
Covai Main Road, Olappalayam Road,
Perundurai – 638 052.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in Proceeding No. TPCB/Per/P3/04325/2020-11 dated 30.06.2020, to quash the same and to issue consequential directions to the respondent to refund the money if recovery is made from the petitioner.

For Petitioner : Mr. M.Ravi

For Respondents : Mr. A.M.Ayyadurai,
Government Advocate (for R1)

Mrs. Vijayakumari Natarajan (for R2 & R3)

ORDER

The instant Writ Petition has been filed challenging the proceedings dated 30.06.2020, wherein an order of recovery and re-fixation of pay against the petitioner was ordered.

2. At this juncture, the learned counsel for the second and third respondents brings to the notice of this Court about a batch of Writ Petitions in W.P. Nos. 775 of 2023, etc., dated 05.04.2024, filed by similarly placed persons. It is relevant to extract the order passed in W.P. No. 775 of 2023,



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etc., batch dated 05.04.2024 (**C. Angusamy vs. Government of Tamil Nadu**), which reads as follows:-

“15. It is no doubt true that in Jagdev Singh's case (supra), it was held that when an undertaking is given by an employee at the time of the initial pay revision, such an employee was on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any. However, in the instant case, such an undertaking was never given to the Board by any of these employees at the time of revision of pay. But, on the other hand, the undertaking was limited to the final outcome of S.L.P. (Civil) No.35969 of 2009, which has already been dismissed on 25.02.2015.

16. In this background, it would be useful to refer to the decision of the Hon'ble Supreme Court in White Washer's case (supra), on the permissibility of the respondents to recover the excess payments. In the said decision, the Hon'ble Supreme Court had summarized a few situations of hardship that may be faced by the employees on the issue of recovery and held to be impermissible in law. Among these situations, recovery from employees belonging to Class III and Class IV (Group C and Group D) service; recovery from retired employees or the employees who are due to retire within one years; 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;



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etc., are some of the situations which were held to be impermissible in law.

17. All these petitioners herein squarely fit into the aforesaid three situations, since they were all in Group-D service and had retired from their respective services, even prior to the recovery order and the recovery, which is now sought to be made, is for a pay fixation in excess of five years prior to the contemplated recovery. Thus, in view of the law laid down in White Washer's case (supra), the impugned order, contemplating recovery of the excess payment, cannot be legally sustained.

18. For all the foregoing reasons, the impugned proceedings, dated 02.12.2022 and 08.12.2022, are quashed, insofar as it orders for recovery of the excess payment. However, the fixation of the revised pay scales shall remain undisturbed. Consequently, there shall be a direction to the Tamil Nadu Pollution Control Board to forthwith refund the recovered amount to the petitioners, that may have been made pursuant to their proceedings dated 02.12.2022 or 08.12.2022, within a period of two (2) weeks from the date of receipt of a copy of this order.

3. Therefore, in view of the above order and the order of the Hon'ble Supreme Court of India passed in Civil Appeal Nos. 9533 to 9537 pf 2019



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and batch, dated 18.12.2019, this Court does not find any infirmity in the fixation of pay. However, the order of recovery is iniquitous and harsh. Therefore, following the judgement of the Hon'ble Supreme Court of India in ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others***, reported in ***(2015) 4 SCC 334***, and the learned Single Judge of this Court has set aside the recovery in ***C.Angusamy's case*** (cited supra).

4. In line with the same, the instant Writ Petition is partly allowed, only to the extent of quashing the recovery order. However, the order of re-fixation is remain undisturbed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

22.10.2024

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Index : Yes/No
Speaking order /Non Speaking Order
Neutral Citation : Yes/No



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To

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C.KUMARAPPAN, J.

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