



W.P.No.14397 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.14397 of 2024

and

W.M.P. Nos. 15643, 15644 and 15645 of 2024

P.S.Muthu

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
School Education Department,
Secretariat, Chennai – 9.

2. The Director of School Education,
College Road, Chennai – 6.

3. The Joint Director of School Education,
College Road, Chennai – 6.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the third respondent vide Na. Ka. No. 015305/A2/E1/2024 dated 03.04.2024 and the impugned appellate order of the second respondent vide Na. Ka. No.



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015305/A2/E1/2024 dated 30.04.2024, and quash the same, and consequently direct the respondents to revise and re-fix the scale of pay of the petitioner and restore old pay and disburse all terminal and pensionary benefits to the petitioner due to his retirement on 30.04.2024, as Personal Assistant to the Joint Director of School Education, with statutory interest.

For Petitioner : Mr. S.N.Ravichandran

For Respondents : Mrs. P.Rajeswari,
Government Advocate

ORDER

This Writ Petition has been filed challenging the order dated 03.04.2024 passed by the third respondent, which ordered recovery and revision of the petitioner's scale of pay, and the order dated 30.04.2024 passed by the second respondent, which confirmed the order passed by the third respondent.

2. The petitioner's father, an Assistant Elementary Educational Officer, died on 10.12.1984, while in service. The petitioner, being his son, was appointed as Junior Assistant on compassionate grounds on 08.02.1985.



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Thereafter, his service was regularized with effect from 08.02.1985. After passing the departmental test, he became eligible for promotion to the post of Assistant. By proceedings dated 02.05.2005, on the file of the third respondent, the petitioner was promoted to the post of Assistant notionally with effect from 30.03.1994, and subsequently, he was promoted to the post of Desk Superintendent on 27.06.2007. Pursuant to G.O. Ms. No. 951 dated 14.09.1984, a combined seniority list was published on 29.11.2002, wherein the petitioner's name appeared at Serial No. 87(a).

3. Thereafter, by proceedings dated 28.06.2007, the third respondent altered the date of joining in the post of Desk Superintendent to 25.04.2003 notionally, and allowed monetary benefits with effect from the date of the petitioner's actual joining in the upgraded post of Superintendent, i.e., 28.06.2007. A dispute exists regarding inter-se seniority among three categories of persons who joined the service: (i) Those directly recruited through the Tamil Nadu Public Service Commission (TNPSC), (ii) Those appointed on compassionate grounds, and (iii) Those recruited under the Rules of Special Absorption in G.O. Ms. No.



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996, dated 22.09.1984. The third category comprises persons not appointed under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, which governs compassionate grounds appointments.

4. This issue was dealt with by the Hon'ble Division Bench of this Court, which issued directions on determining inter-se seniority between those appointed on compassionate grounds and those appointed under the Tamil Nadu Special Absorption Rules, 1987. However, contrary to the said order, the Government passed G.O. (2D) No. 38, School Education (R2) Department, dated 23.07.2009, revising the seniority list for the post of Desk Superintendent from 15.03.2002 to 15.03.2007. Accordingly, the petitioner's seniority, along with others, was revised. Aggrieved by this revision, the petitioner filed an appeal. Subsequently, the petitioner was promoted to the post of Personal Assistant to the Joint Director of School Education and attained the age of superannuation on 30.04.2024.

5. However, one month before the petitioner's retirement date, the third respondent issued a show-cause notice alleging that the petitioner's



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regularization in the post of Desk Superintendent was revised, and seeking revision of seniority, re-fixation of pay, and recovery of excess amount. Upon receiving the notice, the petitioner submitted an explanation dated 25.03.2024, stating that the relevant Government Order was already under challenge before this Court and had been set aside.

6. The learned counsel for the petitioner submitted that the order revising the scale of pay and ordering recovery was passed on the eve of the petitioner's retirement. The appeal was rejected on the ground that the petitioner failed to prefer the appeal within 60 days from the order passed by the third respondent. Furthermore, the counsel pointed out that G.O. (2D) No. 38, School Education (R2) Department, dated 23.07.2009, was set aside by this Court, which directed the Government to fix inter-se seniority afresh for: (i) those appointed through Rules of Special Absorption, and (ii) those appointed on compassionate grounds, as per their initial appointment dates.

7. The third respondent filed a counter-affidavit and the submissions made by the learned Government Advocate appearing for the



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respondents, it reveals that the revision of seniority was drawn solely in accordance with the order of the Hon'ble Supreme Court of India. Furthermore, the revision of seniority and scale of pay was passed in accordance with the revised seniority. It was also stated that the seniority of persons appointed on compassionate grounds was determined through orders issued in G.O (Ms) No. 991, Personnel and Administrative Reforms (Per 3) Department, dated 14.09.1984, which fixed their inter-se seniority with Tamil Nadu Public Service Commission candidates. Accordingly, the Tamil Nadu Public Service Commission (TNPSC) candidates should be placed above the compassionate grounds appointees, as their seniority begins from the date of notification issued by the TNPSC, whereas the date of regularization of the compassionate appointees should be taken into account for determining their seniority.

8. Heard both sides and perused the materials available on record.

9. As rightly pointed out by the learned counsel for the petitioner, G.O. (2D) No. 38, School Education (R2) Department, dated 23.07.2009,



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was set aside by the Madurai Bench of this Court in W.P. (MD) Nos. 12523 and 12037 of 2018, dated 22.12.2023. Accordingly, the Court directed the Government to pass fresh orders, fixing the inter-se seniority of persons appointed: (i) under Special Absorption Rules, and (ii) under compassionate grounds, according to their initial appointment dates. However, the third respondent, without following the directions issued by the Madurai Bench of this Court, passed an order revising the petitioner's scale of pay and ordering recovery of an excess amount. After 39 years of service, and on the verge of retirement, the petitioner's scale of pay was revised, and a recovery of Rs. 2,50,043/- was ordered from the DCRG. This action is contrary to the orders passed by the Hon'ble Supreme Court of India and this Court.

10. In this regard, it is relevant to rely upon the judgment reported in **(2015) 4 SCC 334** in the case of ***State of Punjab and ors Vs. Rafiq Masih (White Washer) and ors.***, in which the Hon'ble Supreme Court of India held as follows :-

“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



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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. 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.

(iii) 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.

(iv) 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."

Thus, it is clear that recovery shall not be made after the period of five years.



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11. Further, it is not the case of the respondents that the petitioner made any false representation to fix his seniority or received excess payment knowingly. Therefore, the excess amount alleged to have been paid by mistake cannot be recovered from the petitioner. The revision of pay scale and re-fixing of the scale of pay is also not sustainable. This is because the petitioner was conferred benefits as per G.O. (2D) No. 38, School Education (R2) Department, dated 23.07.2009. Moreover, the said order was upheld by the Hon'ble Division Bench of this Court.

12. In view of the above, the orders dated 03.04.2024 and 30.04.2024 cannot be sustained and are liable to be quashed. Accordingly, the impugned orders dated 03.04.2024 and 30.04.2024 are hereby quashed. The respondents are directed to restore the petitioner's scale of pay and disburse all terminal and pensionary benefits to the petitioner.



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13. In the result, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

Neutral Citation/Yes/No

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