



WP.Nos.8749 & 8750 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2024

CORAM

**THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.Nos.8749 & 8750 of 2014

and W.M.P.Nos.13759 & 13775 of 2014

W.P.No.8749 of 2024

- 1.R.Ganesan
- 2.K.Tamilselvan
- 3.E.Natarajan
- 4.M.G.Sekar
- 5.K.Manoharan
- 6.K.Lakshmanan
- 7.Raman
- 8.R.Anbanantham
- 9.R.Venkatesan
- 10.S.Ponnuswamy
- 11.Daniel D'Cruz
- 12.J.Kannan
- 13.D.Ulaganathan
- 14.P.Elumalai
- 15.R.Arumugam
- 16.D.Punniyakotti



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- 17.N.Karunakaran
18.R.Rajendran
19.S.Selvanayakam
20.M.Anandharaj
21.A.Elangan
22.K.Sheik Rahamathullah
23.A.Rajamohan
24.K.T.Mohammed Moidheen Abdul Khader
25.V.Arumugam
26.U.K.Malakondaiyah
27.C.Chandran
28.N.Padmanaban
29.N.Dhandapani
30.N.Ramu
31.V.Dharmalingam
32.N.Vijayakumar
33.E.Karunakaran
34.M.Mani

...Petitioners

Vs.

Tamil Nadu Pollution Control Board,
Rep. By its Chairman, No.76, Mount Salai,
Guindy, Chennai 600 032

... Petitioner/Respondent

W.P.No.8750 of 2024

- 1.S.Oliver
2.S.Rajarajan



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3.S.Dhanraj

4.R.Palani

5.T.Devarajan

6.C.M.Padmavathy

7.P.Ravichandran

8.S.Subramanian

9.J.Balakumar

...Petitioners

-VS-

Tamil Nadu Pollution Control Board,
Rep. By its Chairman, No.76, Mount Salai,
Guindy, Chennai 600 032

... Respondent

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of writ of certiorarified mandamus, after calling for the concerned records from the respondent, quash the order of the respondent dated 26.02.2014 bearing proceedings No.TNPCB/Per/P7/ 018057/2012 in so far as the petitioners are concerned as illegal, arbitrary, contrary to law and consequently to direct the respondent to retain the petitioners in the present pay scale of Rs.9300-34800+Grade pay 4200 and pass such other orders or directions as this Court.

In Both Writ Petitions

For Petitioners : Mr.Balan Haridas



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For Respondent : Mr.Vijayakumari

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COMMON ORDER

This writ petition has been filed questioning the proceedings bearing No.TNPCB/Per/P7/018057/2012, dated 26.02.2014, insofar as the petitioners are concerned, revising the pay of the petitioners in ordering for recovery of certain amounts from the petitioners and also sought for a consequential direction to retain the pay of the petitioners in the present pay scale of Rs.9300-34800+Grade pay 4200.

2. When the matter is taken up for consideration, the learned counsel appearing for the respondents submitted that the issue of pay fixation made through the impugned proceedings cannot be interfered with in view of the order passed by the Hon'ble Apex Court in the case of ***"P.Singaravelan -vs- District Collector, Thiruppur"*** reported in (2020) 3 SCC 133, while dealing with the pay fixation of Drivers working in the respondent Organization. However, Mr.Balan Haridas, learned counsel appearing for the petitioners contended that the impugned proceedings was issued in violation



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of the principles of natural justice and hence, the same need to be set aside and the respondents have to re-do the entire exercise and the recovery ordered through impugned proceedings cannot be sustained.

3. In view of the fact that the same issue has been already decided by the Hon'ble Apex Court, as noted herein above in, no purpose would be served in remanding the matter to the respondents on the ground of violation of principles of natural justice. Hence, the impugned order does not require any interference by this court in this writ petition. However, coming to the aspect of recovery of the amounts, if any recovered or proposed to be recovered, based on the impugned order is concerned, the learned counsel for the petitioner placed reliance on a decision of the Hon'ble Apex Court in the case of *State of Punjab and others Vs. RafiqMasih (White washer) and others*, reported (2015) 4 SCC 334. Paragraph No.18 of the said order reads as under :

“18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”

4. However, as it is noticed from the records, that this court passed interim order and by virtue of which, the petitioners continued to draw the pay as fixed prior to the impugned proceedings and thereby, drawing higher pay attached to the post of Assistant Manager though they are only working as



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B.T.Assistants. Therefore, any benefit that is accrued to the petitioner by virtue of interim order, cannot be allowed to be retained, in case, if ultimately the claim of the petitioner is found to be unsustainable. In such circumstances the said decision of the Hon'ble Apex Court in the case of **RafiqMasih** has no application insofar as excess amounts drawn by virtue of the interim order passed by this Court. In other words, it is the duty of the Court to restore the parties to their original position, in which they would have been, but for such interim order passed by this Court, in case finally the writ petition is found to be meritless.

5. However, a learned Judge of this Court in W.P.No.775 of 2023 and batch, under similar circumstances, considered the issue of recovery of the amounts paid to the petitioners because of erroneous fixation of pay and came to the conclusion that the decision of the Hon'ble Apex Court in the case of **white washer** cited supra, held that such amounts cannot be recovered, as all the petitioners have already retired from service and they belong to Class III and Class IV (Group C and Group D), falling under Paragraph No.18 of the **white washer** case. The relevant paragraphs from the said order reads as



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under:-

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“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; 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 W.P.Nos.775, 2507, 2510, 2513, 2514, 2617, 2625, 3791, 3797, 3802 & 3807 of 2023 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



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quashed. 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.

6. In the light of the above, the impugned orders ordering recovery of excess payment cannot be legally sustained and accordingly, the impugned order bearing Proceedings No.TNPCB/Per/P7/018057/2012, dated 26.02.2014 is set aside, only to the extent of ordering for recovery of amounts from the petitioners.

7. Accordingly, the writ petitions are disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

08.08.2024

vsn/skr



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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

MUMMINENI SUDHEER KUMAR,J.

vsn/skr



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