



W.P.No.30801 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

W.P.No.30801 of 2014

and M.P.Nos.1 and 2 of 2014

R.Dhanasekaran

...Petitioner

vs.

1. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Personnel & Administrative Reforms Department,
Secretariat, Fort St.George,
Chennai – 600 009.
2. The State of Tamil Nadu
represented by its Principal Secretary to Government,
Finance Department,
Secretariat, Fort St.George,
Chennai 600 009
3. The State of Tamil Nadu
represented by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai 600 009
4. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006



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5. The Chief Educational Officer,
Dharmapuri District,
Dharmapuri.

(R1 – Deleted as per order dated 05.04.2024 in W.M.P.No.4147/2016 in
W.P.No.30801 of 2014)

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 2nd respondent in Na.Ka.No.6240/A1/2014 dated 00.03.2014 and to quash the same and consequently direct the respondents to refund the amount recovered from the petitioner based on the impugned proceedings along with interest within a time frame to be fixed by this Court.

For Petitioner : Ms.M.Kaviya
for Mr.S.Nedunchezhiyan

For Respondents : Mr. R.Neelakandan
Additional Advocate General
Assisted by
Mr.S. John J. Raja Singh
Additional Government Pleader for R2
Mr.T.M.Rajangam
Government Advocate (Education) for R3 to R5



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ORDER

The proceedings of the 2nd respondent in Na.Ka.No.6240/A1/2015 dated 00.03.2014 and the subsequent proceedings ordering the petitioner to refund the amount are under challenge made by the petitioner herein.

2. The petitioner submits that he was appointed as Post Graduate Assistant in the School Education Department on 12.10.1981 and his services were regularized with effect from 25.10.1981. On completion of ten years of services, he was granted with Selection Grade in the post of Post Graduate Assistant on 25.10.1991 and after ten years, he was granted with Special Grade in the post of Post Graduate Assistant on 25.10.2001. Thereafter, based on his seniority and eligibility, he was given promotion to the post of Higher Secondary School Headmaster on 01.07.2009. The petitioner further submits that he was given Special Grade scale of pay in the post of Post Graduate Assistant on 25.10.2001 and subsequently promoted to the post of Higher School Headmaster on 01.07.2009. Considering the fact that the period of services rendered in the lower post with Special Grade Scale of Pay is higher than the Ordinary



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Grade Scale of Pay for the post of Higher Secondary School Headmaster and the Selection Grade Scale of Pay for the Post Graduate Assistant is equivalent to the Ordinary Grade Scale of Pay to the post of Higher Secondary School Headmaster, he was granted with Selection Grade in the post of Higher Secondary School Headmaster on 01.07.2009. On his request for fixation of pay in the Selection Grade in the post of Higher Secondary School Headmaster after the date of increment and accordingly it was granted with effect from 01.01.2010 as per the proceedings of the 2nd respondent dated 14.01.2011.

3. The petitioner would further submit that the revised scale of pay was implemented for the Government Servants in the State of Tamil Nadu with effect from 01.01.2006 as per the G.O.Ms.No.234, Finance Department dated 01.06.2009. As per revised scale of pay implemented, no separate scale of pay has been provided for the Selection Grade/Special Grade post except one increment equal to 3% Basic Pay including Grade Pay in the same pay band is allowed to the employees on award of Selection Grade/Special Grade. Subsequently, it was revised to 6% of basic pay including Grade Pay with effect from 01.04.2013, based on the recommendation of Pay Grievances Redressal Cell.



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4. It appears that when the pension proposal was sent, objection was raised by the Accountant General with reference to the benefit of awarding of Selection Grade in the promoted post with effect from 01.01.2010. On that basis, the 2nd respondent issued the impugned order on March' 2014 ordering recovery from the petitioner by stating that the grant of Selection Grade Scale of Pay in the post of Higher Secondary School Headmaster from 01.01.2010 to 31.12.2013 is in excess. Accordingly, the excess amount of Rs.89,136/- was directed to be recovered. Hence this writ petition.

5. Heard Ms.M.Kaviya, learned counsel for the petitioner, Mr.R.Neelakandan, learned Additional Advocate General assisted by Mr.S.John S.Raja Singh, learned Additional Government Pleader for the 2nd respondent and Mr.T.M.Rajangam, learned Government Advocate (Education) for respondents 3 to 5.

6. It was contended by Mr.R.Neelakandan, learned Additional Advocate General that as per the G.O.Ms.No.590, Finance Department dated 01.08.1992, the Government has issued orders stating that "if a



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person is promoted to the Higher Post having lower scale of pay from

Special Grade of Lower Post having higher scale of pay, he/she may

permitted to get pay and allowances in the promotion post continuously in

the scale of pay of Special Grade of the lower post, in which he had

already drawn pay and allowances, giving one increment for promotion”.

Accordingly, the writ petitioner was allowed to draw pay and allowances

continuously in the scale of pay of Rs.9100-275-14050 (i.e.The Special

Grade Post Graduate Assistant Scale of Pay) in Higher Secondary School

Headmaster promotion post with effect from 01.07.2009 onwards, since the

Ordinary Grade Higher Secondary Headmasters's Scale of pay was

Rs.8000–275–13500 in 6th pay commission, which is lesser than the

Special Grade Post Graduate Assistant Scale of pay.

7. Mr.R. Neelakandan, learned Additional Advocate General would

further contend that, as per G.O.No.234/Finance (PC) dated 01.06.2009 no

separate scales of pay is provided for Selection Grade and Special Grade

posts, instead of that two increments (3% + 3% pay benefit) were allowed

to the employees on award of Selection Grade/Special Grade as per

G.O.Ms.No.237/Finance (PC) dated 22.07.2013.



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8. As per Government Letter No.7296/2012-1 Personnel and Administrative Reforms (s) Department dated 14.05.2012, there are no separate scales pay for Selection Grade/Special Grade posts with effect from 01.01.2006 and the question of counting the services rendered in the Selection Grade/Special Grade of the lower post for awarding Selection Grade/Special Grade in the promotion post after 01.01.2006 does not arise.

9. Based on the said letter, the Accountant General raised objection stating that "the benefit of awarding selection grade/special grade in the promotional post by counting the services rendered in identical/higher scales of pay is not admissible with effect on 01.06.2009 and hence the awarding of selection grade in Higher Secondary Headmaster post on 01.01.2010 is incorrect.

10. It was further contended by the learned Additional Advocate General that the writ petitioner is not eligible to get Selection Grade in Higher Secondary School Headmaster promotion post, as he did not complete the 10 years of Selection Grade and Special Grade Post Graduate Assistant services along with Headmaster Service within the grace period extended by the Government from 01.01.2006 to 31.05.2009



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as per the Government Letter No.23373/Personnel and Administrative Reforms (S) Department dated 09.08.2011. He has been awarded Selection Grade in Higher Secondary Headmaster post as on 01.07.2009.

11. In the case of recovery, it is relevant to refer to the observations made by the Hon'ble Apex Court in *State of Punjab and Others Vs. Rafiq Masih (White Washer) and others* reported in (2015) 4 SCC 334. It has been concluded that:

"...orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish



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that the recovery being effected was iniquitous, and therefore, arbitrary ”

12. The Doctrine of Equality is enshrined in Articles 14 to 18 of the Constitution of India which deals with “fundamental rights”. The action of the state, ordering recovery from its employee should not be iniquitous which means it should not be unfair and unwarranted compared with right of the employer, to recover the amount. If it gives harsh effect on the employee, definitely it is not permissible in law. Under what circumstances, the recovery can be termed as a reasonable one, and it has been explained by the Hon'ble Supreme Court in *Syed Abdul Qadir Vs. State of Bihar* reported in (2009) 3 SCC 475, wherein it has been observed that:

“... the issue of recovery revolved on the action being iniquitous. Dealing with the subject of being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is deducted within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or



arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee."

13. The observations made by the Hon'ble Supreme Court in *Shyam Babu Verma Vs. Union of India* reported in (1994) (2) SCC 521 is also relevant for better understanding. In this context, the Hon'ble Apex Court has observed as follows:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the



recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

14. From the conspectus of Judgments, it is deducible that the right of recovery can be sustained if the recovery is not iniquitous or arbitrary. Of course, recovery from the employee in the lower rank of services would necessarily result in hardship than the comparative gain to the employer.

15. The Hon'ble Supreme Court has categorized under what circumstances the recoveries from the employees are not permissible in law. Few categories are given as under:

- (i) Recovery from employees belonging to Class-III and Class-V service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who*



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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.

The petitioner retired on 31.03.2014 and the order of recovery was passed in the month of March' 2014. Among the five categories, the second category would apply for the petitioner, where within one year from the date of retirement, the order of recovery was passed.

16. As per G.O.Ms.No 234 dated 01.06.2009, as per the Revised Scale of Pay implementation, the following passage of the order is relevant and is extracted hereunder:

“4. Selection Grade and Special Grade Scales of Pay:



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The existing scheme of Selection Grade/Special Grade shall be continued in the revised pay scales to employees drawing the Grade Pay from Rs.1,300 to Rs.6,000/- and such employees shall be allowed to move to Selection Grade on completion of 10 years of service in the Ordinary Grade post and to Special Grade on completion of 10 years in the Selection Grade Post or 20 years of total service in a post. The pay of such employees who have moved to Selection Grade/Special Grade on or after 01.01.2006 shall be fixed on the date of award of Selection Grade/Special Grade by granting the benefit of one increment equal to three per cent of the basic pay including grade pay in the same Pay Band and Grade Pay.”

17. At the best, his pay scale can be fixed by granting the benefit of one increment equal to 3% of the basic pay including Grade Pay in the same pay band and the Grade Pay with effect from 01.01.2006.

18. The petitioner was granted Selection Grade on completion of 10 years of service with effect from 25.10.1991 and he was awarded Special Grade on completion of 20 years of service with effect from 25.10.2001. He was promoted as Higher Secondary Headmaster on 01.07.2009. As per the said G.O.Ms.No.234 granting of Selection Grade



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with effect from 01.01.2010 is incorrect. However, as per the observations of the Hon'ble Supreme Court, the recovery was made within a year from the date of retirement of the petitioner, therefore, the recovery has to be termed as iniquitous.

19. This court is of the considered opinion, the order of recovery made in line with the directions of the Hon'ble Supreme Court is iniquitous and is liable to be set aside and the impugned proceedings is hereby quashed.

20. The learned counsel for the petitioner would submit that, the amount of Rs.89,136/- was remitted by him. However, in the affidavit it is mentioned that amount is paid by the petitioner and the counter also reads to this effect.

21. In view of the above said details, the order of recovery is declared as bad in law. The petitioner is entitled to be refunded such amount within a period of 8 weeks from the date of receipt of a copy of this order.



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22. Based on the aforesaid observations, this writ petition is allowed. There is no order as to costs. Connected miscellaneous petitions stands closed.

28.06.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
mac/sma

R.KALAIMATHI, J.
mac/sma

To

1. The Principal Secretary to Government,
Finance Department,
Secretariat, Fort St.George,
Chennai 600 009
2. The Principal Secretary to Government,
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