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W.P.No.44056 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.44056 of 2016

and

W.M.P.No.37861 of 2016

1.G.Kanagasabai (Deceased)
2.K.Krishnaveni

[P.2 - Substituted as LR's of deceased P.1, as per order dated 23.04.2024 in W.M.P.No.10795 of 2024 in W.P.No.44056 of 2016 by RKMJ]

... Petitioners

Vs.

1.The Government of Tamil Nadu rep. by
The Principal Secretary to Govt.
Co-operation Food and Consumer Protection,
Department, Fort St. George, Chennai - 600009

2.The Registrar of Co-operative Societies,
Chennai - 600010.

3.The Deputy Registrar of Co-operative Societies,
Cuddalore, Cuddalore District.

...Respondents



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Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, to call for the records relating to the impugned order of the third respondent in Na.Ka.2163/ 2013 Pa dated 06.10.2016 and quash the same and direct the third respondent to restore the pay fixation which was in vogue prior to the impugned order and grant him all consequential benefits.

For Petitioner : M/s.P.Rajendran

For Respondents :
(for R1) :Mr.V.Jeevagiridharan, AGP

(for R.2 and R.3) :Mr.P.Ganesan, AGP

ORDER

In the above writ petition, the petitioner seeks to challenge the order passed by the 3rd respondent re-fixing his scale of pay and directing the recovery of the arrears already paid to him.

2. The case of the petitioner is that he was initially appointed as an Office Assistant on 01.05.1971 and thereafter appointed as a Junior Assistant on 02.09.1996 and when he retired from service on 28.02.2010, he was holding the post of Junior Inspector of Cooperative Societies in the office of the Deputy Registrar of the Cooperative Societies, Cuddalore.



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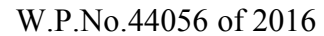
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3. The petitioner would submit that the Government of Tamil Nadu had issued a Government letter dated 08.11.2010, revising the Selection Grade and Special Grade scales of pay for the Ordinary Grade of 5200-20200 + GP of 2400 as follows:-

(i) Selection Grade = 9300 - 34800 + GP 4200.

(ii) Special Grade = 9300 - 34800 + GP 4400.

Consequently, the petitioner's pay was fixed in the Ordinary Grade Scale in the post of Junior Assistant. Since the post of Junior Assistant was not a promotional post, the Government clarified that these persons were entitled to the Selection Grade Scale of pay as mentioned above. i.e. Rs.9300-34800 + GP 4200 without restriction and this re-fixation was notionally with effect from 01.01.2006 with the monetary benefit being from 01.02.2011. The Government order had been communicated by the Registrar of Co-operative Societies, Chennai to the Additional Registrar, Chennai Region, all the Regional Joint Registrars and Joint Registrars (Public Distribution System) I & II, Chennai.



5. The learned counsel appearing for the petitioner would submit that the impugned order of the 3rd respondent is against the dicta laid down by the Hon'ble Supreme Court in the judgement reported in *(2015) 4 SCC 334 – State of Punjab and others Vs. Rafiz Masih (White Washer) and Others*.



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6. In the said judgment, the issue involved was the recovery of excess amount paid to the employees in excess of their entitlement and the consequent recovery of the excess amount paid. After discussing the law at the relevant point in time and the various judicial pronouncements, the Hon'ble Supreme Court has ultimately held as follows:-

"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 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'



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7. The case of the petitioner is covered under Paragraph No.18(ii) of the judgment cited supra. Therefore, the recovery proceedings initiated by the 3rd respondent has to necessarily be set aside.

8. Accordingly, the writ petition stands allowed, quashing the impugned order dated 06.10.2016 passed by the 3rd respondent in Na.Ka.2163/2013 Pa and directing the 3rd respondent to restore the pay fixation which was in vogue prior to the impugned order and grant him all consequential benefits. No costs. Consequently, the connected Miscellaneous Petition is closed.

07.06.2024

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No



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