IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.20699 of 2023
and W.M.P.Nos.20060 of 2023 and 1703 of 2024

1. R.Meganathan
2. K.Chandramohan
3. S.Thillai Natarajan
4. P.Chinnaraju
5. D.Sathishkumar
6. M.Arjunan ... Petitioners

-Vs-

1. Government of Tamil Nadu,
   represented by its Secretary to Government,
   Finance Department,
   Fort St.George,
   Chennai 600 009.

2. Government of Tamil Nadu,
   represented by its Secretary to Government,
   Health and Family Welfare Department,
   Fort St.George,
   Chennai 600 009.

3. The Managing Director,
   Tamil Nadu Medicinal Plant Farms
   and Herbal Medicine Corporation Ltd.,
   A Government of Tamil Nadu Undertaking,
   Anna Hospital Campus,
   Arumbakkam,
   Chennai-600 106.

4. The Principal Accountant General (Audit-I),
Tamil Nadu,
"Lekha Pariksha Bhavan",
No.361, Anna Salai,
Teyanampet,
Chennai-600 018. ... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the impugned proceedings of the third respondent issued in Na.Ka.No.A1/1408/Admin/2022, dated 23.06.2023 and quash the same as illegal, arbitrary, contrary to law, unconstitutional and in violation of principle of natural justice.

For Petitioners	: Mr.Ma.Gouthaman
For R1 and R2	: Mr.G.Ameedius Government Advocate
For R3	: Mr.M.Alagu Goutham
For R4	: Mr.S.Balaji

ORDER

This Writ Petition has been filed challenging the order passed by the third respondent in Na.Ka.No.A1/1408/Admin/2022, dated 23.06.2023, thereby ordered to recover the excess amount paid to the petitioners and also to revise the pay scale of the petitioners.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The grievance of the petitioners are one and the same. They were appointed as Salesman and subsequently, they were promoted to the post of Assistant and Supervisor with effect from 10.05.2018. At present, they are working with the third respondent. They were appointed as Salesman and Junior Assistant. While they were working as casual labourers, their basic pay was fixed within the time scale of pay of Rs.975-25-1150-30-1600 on 08.03.1995. The next avenue of promotion was Supervisor and Assistant for the petitioners that too after 23 years of long service. Their scales of pay and pay bands were considered by the Government of Tamil Nadu during 6th pay Commission and there were anomalies in fixation of pay scales. Due to anomalies expressed by other departments, One Man Commission was appointed by the Government of Tamil Nadu in order to address the grievance of the employees. As per the report of the One Man Commission, a Government order was passed to the effect that the petitioners' pay scales and pay bands were revised and they have been upgraded to selection grade from Rs.5200-20200+GP Rs.2400/- to Rs.9300-34800+GP.Rs.4200/-. Accordingly, the allowances of the petitioners were fixed commencing from 01.01.2006 by giving monetary benefits from 01.01.2007, by the communication, dated

08.11.2010, passed by the first respondent. Therefore, the scales of pay were fixed by the third respondent based on the recommendation of One Man Commission and as per the Government Order. All of a sudden, without any prior show cause notice and without giving opportunity to the petitioners, by the impugned order dated 23.06.2023, when their pay scale was revised, recovery of excess pay was also ordered.

4. The learned counsel for the petitioners would submit that the petitioners were not served with any show cause notice and they were not given any opportunity before passing the impugned order. Therefore, it is a clear violation of principals of natural justice. The petitioners never misrepresented to seek relief of scales of pay and therefore, no recovery can be made from the petitioners.

5. The Hon'ble Supreme Court of India and this Court repeatedly and consistently held that if the excess amount was not paid on account of any misrepresentation fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or

allowances are not recoverable. It was further alleged that excess payment made to the group C and D employees cannot be recoverable.

6. In support of his contention, he also relied upon the Judgment of the Hon'ble Supreme Court of India reported in ***2015 4 SCC 334*** in the case of ***State of Punjab and others Vs Rafiq Masih (White Washer) and others,*** wherein it was 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' service).*
>
> *(ii) Recovery from retired employees, or employees who 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."*

7. The third respondent filed a counter and the learned counsel for the third respondent submitted that the petitioners were served with a notice on 23.06.2023. Therefore, there is no question of violation of principals of natural justice. They were given opportunity and an order of recovery was passed and accordingly, their scale of pay was revised. Further, the order of recovery can never be termed as iniquitous, harsh or arbitrary. As per the law declared by the Court, in the matter of recovery of excess payments, there is no bar to recover the over payment made to the Government Servants. The petitioners have been drawing higher scale of pay and allowances in the scale of pay of Rs.9300-34800+GP Rs.4200/- for nearly 13 years, despite the fact that they are not entitled to have the said time scale of pay. Therefore, the excess pay and allowances drawn by the writ petitioners from the period from 01.08.2010-31.05.2023 works out to a huge sum and unless the excess payment made to the petitioners are recovered at-least in easy installments, the respondents had to incur a heavy financial loss.

8. A perusal of the alleged show cause notice dated 23.06.2023 revealed that though it is stated as notice, it was also issued on 23.06.2023 i.e. Date of the impugned order to recover the excess amount paid to the petitioners. That

apart, it never called for any explanation from the petitioners before passing the order of recovery. Therefore, it would not amount to show cause notice. On the very same date, ie., 23.06.2023, the order was passed to recover the excess amount and also revised the scale of pay of the petitioners.

9. A perusal of records revealed that considering the long period of service rendered by the petitioners and the fact that other similarly placed persons were already considered, One Man Commission was appointed by the Government of Tamil Nadu, in order to address the grievance of the employees. On receipt of the report from the One Man Commission, the Government passed an order in G.O.Ms.No.234, Finance (PC) Department dated 01.06.2009. Based on the said Government Order, by the communication dated 08.11.2010, the Government issued guidelines for fixation of pay in the revised Selection Grade/Special Grade posts. It reads as follows:-

> " *i) The revised Selection Grade / Special Grade scales of pay in the case of employees awarded Selection Grade / Special Grade prior to 1-1-2006 and in whose cases the Ordinary Grade scales of pay have been revised based on the recommendations of One Man Commission / further order of Government thereon shall be fixed as per the scales of pay indicated in the Annexure - I to this letter following the same methodology of fixation of pay in the Selection Grade / Special Grade scales of pay of employees as was done in pre--2006 scales of pay as indicated in Appendix-ll of G.O.Ms.No.162, Finance (PC) Department, dated: 13-4-98*

subject to the same condition stipulated therein that if the revised Selection Grade / Special Grade scales of pay indicated in the Annexure-l happens to be higher than the first level / second level promotion posts, then in such cases only the revised Selection Grade / Special Grade scales of pay should be restricted to the level of their first level and second level promotional posts respectively.

ii) The above revised Selection Grade / Special Grade scales of pay indicated in the Annexure -I to this letter shall be confined only to the employees who were awarded Selection Grade / Special Grade prior to 1-1-2006 and in the case of employees who have exercised their option to come over to the revised scales of pay on the date of their award of Selection Grade / Special Grade between 1-1-2006 and 31-5-2009, (prior to the issue of G.O. Ms. No. 234, Finance (Pay Cell) Department, dated: 1-6-2009.)

iii)The revised Selection Grade / Special Grade scales of pay indicated in Annexure -I to this letter is admissible only in cases where the scales of pay of the Ordinary Grade posts were revised based on the recommendations of the One Man Commission and subsequent Government Orders.

iv) The above revised Selection Grade / Special Grade scales of pay is not applicable to the employees moving to Selection Grade / Special Grade posts on or after 1-6-2009 since these employees are awarded Selection Grade / Special Grade directly in the revised scales of pay and therefore entitled for one increment benefit equal to 3% of basic pay plus grade pay on the date of award of Selection Grade / Special Grade as ordered in para-4 of G.O.Ms.No.234, Finance (PC) Department, dated: 1-6-2009."

10. Accordingly, the pay scales and pay bands of the petitioners were revised and their pay has been upgraded to selection grade from Rs.5200-

20200+GP Rs.2400/- to Rs.9300-34800+GP.Rs.4200/- Therefore, they are eligible and entitled to avail and receive the said scales of pay as indicated in the Government Order.

11. The petitioners are coming under the Group C cadre and the Hon'ble Supreme Court of India in a catena of decisions held that the recovery from the employees belonging from Class III and IV service would be impermissible in law. The 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, would also be impermissible in law.

12. In the case on hand, the petitioners are coming under Group C cadre. That apart, they were granted revised pay scale benefits from 01.01.2007. After a period of 16 years, it cannot be recovered that too on the ground of excess payment. Any recovery after a period of five years is impermissible in law. That apart, the excess amount that has been paid to the petitioners were not because of any misrepresentation or fraud on the part of the petitioners and the petitioners had no knowledge that the amount that was being paid to them was more than what they were entitled to. Therefore, the issue of recovery revolved

on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded that when the excess unauthorised payment is detected 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.

13. As stated supra, the monetary benefits were granted from 01.01.2007 to the petitioners. Therefore, after a period of 16 years, the impugned order of recovery is termed as iniquitous or harsh or arbitrary. Further, the petitioners were not given any opportunity of hearing and the respondents, without following the principals of natural justice, mechanically passed an order to recover such huge amount that too from the year 2007.

14. In view of the above, the impugned order passed by the third respondent cannot be sustained as against the petitioners and is liable to be quashed. Accordingly, the impugned proceedings of the third respondent issued in Na.Ka.No.A1/1408/Admin/2022, dated 23.06.2023, are hereby quashed.

15. Accordingly, this writ petition is allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

06.02.2024
(½)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J,

mn

To

1. The Secretary to Government,
   Government of Tamil Nadu,
   Finance Department,
   Fort St.George,
   Chennai 600 009.

2. The Secretary to Government,
   Government of Tamil Nadu,
   Health and Family Welfare Department,
   Fort St.George,
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3. The Managing Director,
   Tamil Nadu Medicinal Plant Farms
   and Herbal Medicine Corporation Ltd.,
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4. The Principal Accountant General (Audit-I),
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