IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.2483 of 2023
and
C.M.P.No.20561 of 2023

The Managing Director,
The Salisbury Industrial
Co-operative Tea Factory Ltd.,
Gudalur-643 212
The Nilgiris District. ... Appellant

Vs.

1.R.Murugesan

2.The Joint Registrar (Tea),
INDCOSERVE Campus,
Coonoor - 643 101.
The Nilgiris District.

3.KMV.Manivannan,
Additional Director (Industrial (Co-operative) (Retd.,)
Flat No.4, GA Enclave,
Plot No.1/31, Sathya Nagar, 1st Main Road,
Manapakkam, Land Mark Behind Miot Hospital,
Chennai - 600 125. ... Respondents

(3rd respondent impleaded vide order
dated 25.04.2024 in C.M.P.No.1110 of 2024 in
W.A.No.2483 of 2023)

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 07.09.2022 made in W.P.No.16344 of 2019.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.L.Chandrakumar
For M/s.K.Lavan for R1

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

Challenging the order dated 07.09.2022 passed by a learned Judge in W.P.No.16344 of 2019, the present writ appeal has been filed by the appellant viz., Managing Director of the Salisbury Industrial Co-operative Tea Factory Ltd, Gudalur- 643 212, The Nilgiris District. By the order impugned herein, the learned Judge quashed the recovery proceedings initiated against the first respondent herein.

2. Facts in brief:

2.1. The first respondent / writ petitioner was initially appointed as Junior Assistant in the appellant's factory in 1984. In 1988, he was promoted to the post of Cashier. In December 2001, during an inspection, it was found that there was a shortage of cash of Rs.43,221.57, for which the first respondent/writ petitioner and the then Manager by name M.Sampath were held responsible. It was further found that on the day of inspection, the first respondent/writ petitioner and the said M.Sampath had withdrawn an amount of Rs.5,00,000/-

from the account of the appellant's factory and only an amount of Rs.2,50,000/- was brought on books of account, by way of rough cash chitta and the remaining amount of Rs.2,50,000/- was misappropriated by them. Consequently, disciplinary proceedings were initiated against the first respondent/writ petitioner, and after inquiry, the charges of misappropriation were proved against him.

2.2. Given the gravity of misconduct, the appellant initially decided to dismiss the first respondent/writ petitioner from service. However, the first respondent/writ petitioner admitted his misconduct and sought leniency in imposition of punishment. The appellant, considering the request of the first respondent / writ petitioner, resolved to appoint him as Record Clerk *vide* proceedings dated 25.09.2002.

2.3. However, despite receiving the proceedings dated 25.09.2002, the respondent / writ petitioner did not turn up for work. But, belatedly, the respondent/writ petitioner filed W.P.No.30657 of 2003 (first round of writ petition) challenging the order dated 25.09.2002 primarily on the ground that he ought not to have been reverted to the post of Record Clerk, which is lower than the post of Junior Assistant to which he was originally appointed.

2.4. This writ petition was allowed by order dated 18.06.2004, however, with liberty to the appellant to take appropriate steps afresh as per law. Subsequently, the appellant, considering the gravity of the proved charges against the first respondent/writ petitioner, dismissed him from service *vide* order dated 07.07.2004.

2.5. Challenging the order of dismissal dated 07.07.2004, the first respondent/writ petitioner filed W.P.No.20314 of 2004 (second round of writ petition), which was disposed of, by order dated 03.08.2016, with a direction to the appellant to reinstate the first respondent/writ petitioner as Junior Assistant, subject to his undertaking not to claim backwages and to maintain good conduct in future.

2.6. Pursuant to the aforesaid order dated 03.08.2016, the first respondent/writ petitioner submitted an affidavit dated 31.12.2016, undertaking not to claim backwages and to maintain good conduct, and based on the same, he was reinstated into service as Junior Assistant *vide* order dated 02.01.2017. His salary was initially fixed in the scale of Rs. 5200-20200 + Grade Pay (GP) 2400 as applicable to the post of Junior Assistant as per the 6th Pay Commission's recommendations.

2.7. However, without any reference to the Board of Directors, the then Managing Director unilaterally revised the first respondent/writ petitioner's salary from the scale of Rs.5200-20200 + GP 2400 to a whopping scale of Rs.9300-34800 + GP 4200 *vide* proceedings dated 30.05.2017, with effect from 02.01.2017. This revision was purportedly based on a representation dated 20.02.2017 submitted by the first respondent/writ petitioner.

2.8. According to the appellant, the revision of salary was tainted with collusion between the first respondent/writ petitioner and the then Managing Director, who held the additional charge of Joint Director (Tea), Coonoor, inasmuch as the then Managing Director, in his capacity as Joint Director (Tea), passed an order dated 19.05.2017, approving the proposed revision of salary based on the first respondent/writ petitioner's representation dated 20.02.2017. Subsequently, in his capacity as Managing Director, he passed the order dated 30.05.2017, revising the first respondent/writ petitioner's salary.

2.9. The appellant also pointed out that in the third round of writ petition, the first respondent/writ petitioner had suppressed the fact of submitting the affidavit dated 31.12.2016 pursuant to the order passed in the second round of writ petition and the representation dated 20.02.2017 submitted by him seeking revision of pay. Additionally, the first respondent/writ petitioner had also suppressed the fact that he, along with 15 other Junior Assistants/Typists, had filed a complaint before the Labour Office, Coonoor, challenging the fixation of their Grade Pay at Rs. 2,800/- instead of Rs. 4,200/-. However, over a period of time, all the other 15 Junior Assistants accepted the Grade Pay of Rs.2,800/- and repaid the excess payments, while the first respondent/writ petitioner failed to follow suit.

2.10. Subsequently, based on a Special Audit Report dated 02.11.2018, which objected to the fixation of the first respondent/writ petitioner's salary at the revised scale and recommended adjustment of the excess payment made under the Grade Pay head, the appellant initiated proceedings against the first respondent/writ petitioner *vide* order dated 27.05.2019, seeking recovery of Rs. 4,92,723/- towards excess payment for the period from January 2017 to April 2019.

2.11. Aggrieved by the above said recovery order, the first respondent/writ petitioner filed W.P.No.16344 of 2019 (third round of writ petition). The learned Judge, relying on the decisions of the Hon'ble Supreme Court in ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.*** *[(2015) 4 SCC 334]* and ***Thomas Daniel vs. State of Kerala & Ors.*** *[2022 SCC OnLine SC 536]*, allowed the writ petition by holding that recovery of excess payment from an employee would be impermissible in certain situations, including cases where the excess payment was made for no fault or misrepresentation of the employee. The relevant portion of the order passed by the learned Judge is reproduced hereunder:

> *"7. The law with regard to the subject issue is well settled by the decision of the Hon'ble Supreme Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334 commonly known as White Washer case. The relevant paragraph of the said judgment is reproduced hereunder:*
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> > *'8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more*

improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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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.'

8. The aforesaid decision has also been followed by the recent decision of the Hon'ble Supreme Court in the case of Thomas Daniel vs. State of Kerala and Others reported in 2022 SCC Online SC 536.

9. In the case on hand, it is not in dispute that for no fault of the petitioner, he has been called upon to pay the excess amounts which according to the respondents have been allegedly made by them. The Hon'ble Supreme Court in the aforesaid decisions has made it clear that whenever, any excess payment has been made by the employer for no fault or misrepresentation of the employee which is unfair and causes irreparable hardship to the petitioner, the question of return of the alleged excess payment of the employer by the employee will not arise. The petitioner is a Junior Assistant and is a physically *handicapped person. Further, he is also slated to retire from service in the month of January 2024. Therefore, the aforesaid decisions rendered by the Hon'ble Supreme Court squarely applies to the case of the petitioner and therefore, the respondents cannot recover the excess payments from him.*

10. For the foregoing reasons, this writ petition will have to be allowed. Accordingly, the impugned letter dated 08.05.2019 issued by the first respondent and the recovery proceedings dated 27.05.2019 issued by the second respondent are hereby quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed."

2.12. Dissatisfied with the order so passed by the learned Judge, the appellant has filed the present writ appeal.

3. Considering the nature of the allegations levelled against the then Managing Director of the appellant factory, by name, K.M.V.Manivannan, this court has impleaded him as third respondent to this appeal, *vide* order dated 25.04.2024 passed in CMP.No.1110 of 2024 filed by the appellant.

4. According to the learned counsel for the appellant, the respondent / writ petitioner, in collusion with the then Managing Director, wrongly obtained the pay revision. Adding further, the learned counsel submitted that as per the order dated 03.08.2016 passed in the second round of writ petition, the respondent/writ petitioner gave an undertaking by filing an affidavit dated 31.12.2016 that he is willing to work in the post to which he was originally appointed, viz., Junior

Assistant and he will not claim backwages and he will not do any such act in future. Pursuant to the same, he was reinstated in service by order dated 02.01.2017. Subsequently, he made the representation dated 20.02.2017 seeking revision of pay, based on which, the then Managing Director addressed a letter dated 24.04.2017 to himself in the capacity of Joint Director (Tea). Subsequently, in his capacity as Joint Director (Tea), he addressed a communication dated 19.05.2017 to the Managing Director, who is none other than himself, in and by which it is stated that the error in the pay fixation statement of the first respondent/ writ petitioner, has been corrected. Thereafter, the then Managing Director, who, once again is none other than the Joint Director (Tea), passed an order dated 30.05.2017, fixing the basic pay of the respondent / writ petitioner from Rs.5,300/- along with G.P. Rs.4,200/-. Taking into account annual increments for the years 2002 to 2005, the basic pay was recalculated to Rs.5,700/-. Further revision as per the 6th Pay Commission resulted in the revised amount of Rs.9,500/-. Additionally, the Grade Pay was fixed at Rs.4,200/-. Thus, the net consequence of this revision was an overpayment of Rs.16,105/- per month to the respondent / writ petitioner, which caused a total loss of Rs.4,92,723/- to the appellant.

4.1. The learned counsel also submitted that the first respondent/writ petitioner had also suppressed the fact of filing of a complaint before the Labour

Office, Coonoor, challenging the fixation of their Grade Pay. That apart, non-recovery of Rs.4,92,723/- from the first respondent/writ petitioner could adversely affect the Co-operative Society's financial condition, especially given the fact that its members are small tea growers who are already struggling with receiving fair compensation for their green leaf. However, the learned Judge, without considering these facts in their proper perspective, allowed the writ petition and quashed the recovery proceedings and hence, the order passed by the learned Judge is liable to be set aside.

5. *Per contra,* the learned counsel for the first respondent / writ petitioner would submit that there is neither misrepresentation nor a false claim made by the first respondent / writ petitioner. Reiterating the arguments put forth before the writ Court, the learned counsel submitted that the order passed by the learned Judge does not require any interference, as the same has been passed based on the principles of fair play, equity, good conscience and natural justice.

6. Heard the rival submissions and perused the materials available on record.

7. The summation of facts as above, is not in dispute. It is to be pointed out that firstly, the pay revision granted to the first respondent was thoroughly

illegal and tainted with collusion. The undisputed facts clearly establish that upon reinstatement, the first respondent's pay was rightly fixed in the pay scale of Rs.5200-20200 + GP 2400 as applicable to the post of Junior Assistant, as per the 6th Pay Commission's recommendations. However, this was unilaterally and arbitrarily revised without any authority or justification by the then Managing Director to an unjustly higher scale of Rs.9300-34800 + GP 4200 w.e.f. 02.01.2017 itself. Importantly, be it noted, this revision was made without obtaining the necessary approval from the Board of Directors.

8. Secondly, from a perusal of the records, it could be seen that the first respondent / writ petitioner deliberately concealed / suppressed the vital information regarding his own action in pursuing the illegal pay revision, in the third round of writ petition. Why this court observes so is, he failed to disclose not only the factum of filing of affidavit dated 31.12.2016 undertaking not to claim backwages pursuant to the order passed in the second round of writ petition, but also submission of representation dated 20.02.2017 seeking revision of pay, besides, suppressing the fact that he, along with 15 other Junior Assistants, lodged a complaint before the Labour Office challenging their Grade Pay fixation, which the others eventually accepted and also repaid the excess amount received, which was not done by him. The suppression of these facts was evidently intended to mislead the court, thereby he had directly contravened the

commitment to maintain good conduct upon his reinstatement, as undertaken by him.

9. Thirdly, the entire illegal activity was perpetrated through collusion between the first respondent / writ petitioner and the then Managing Director, the third respondent, who was holding additional charge of the Joint Director (Tea). Shockingly, the third respondent, while serving as additional charge of Joint Director (Tea) in Coonoor approved the proposed pay revision, based on the first respondent/writ petitioner's representation dated 20.02.2017. Later, in his role as Managing Director, he issued the order dated 30.05.2017, revising the first respondent's pay from the original basic pay of Rs.5300/- to Rs.9500/- and upgrading the Grade Pay to Rs.4200/-. This blatant misuse of official authority presumably for personal gain must be condemned and cannot be slightly brushed aside by this court. Superadded, the third respondent, who was the Managing Director at the relevant point of time and who was primarily responsible for facilitating the illegal pay revision through the misuse of his official position and authority, is liable to be penalised for his clear misconduct, conflict of interest and lack of integrity as a public servant for aiding the first respondent / writ petitioner to derive a benefit through collusion to the detriment of the appellant factory, which was already facing financial doldrums.

10. Furthermore, the appellant is a cooperative society consisting of small tea growers who are already struggling financially. Allowing the unauthorized excess payment of Rs.4,92,723/- to continue would significantly harm the economic interests and rights of these financially vulnerable members. The fact that the appellant is already facing difficulties in obtaining fair compensation for their green leaf produce in a market that exploits them, as submitted by the learned counsel for the appellant, cannot be lost sight of.

11. However, the learned Judge allowed the writ petition by merely drawing inspiration from the judgments of the Supreme Court adverted to in paragraph 2.11, *supra* and without considering the actual facts obtaining in this case, which were suppressed by the first respondent / writ petitioner. It is trite that each case should be examined on its own merits and facts. In similar circumstances, the Hon'ble Supreme Court in the judgment in *High Court of Punjab & Haryana and others v. Jagdev Singh [(2016) 14 SCC 267]*, allowed the appeal and set aside the judgment of the High Court, by holding that the recovery should be made in reasonable instalments, as the principle enunciated in *Rafiq Masih (White Washer)* case, cannot apply to that case. While so, it was observed by the Hon'ble Supreme Court that '*the officer to whom the payment was made in the first instance was clearly placed on notice that <u>any payment found to have been made in excess would be required to be refunded; the officer</u>*

furnished an undertaking while opting for the revised pay scale; and he is bound by the undertaking'. (emphasis supplied).

12. While parting, this court hastens to add that the act of the first respondent / writ petitioner in filing the third round of writ petition is nothing short of taking this court for a ride which is deprecatory.

13. In the light of the above discussion, this court comes to an irresistible conclusion that the order of the learned Judge setting aside the recovery proceedings is liable to be quashed; the first respondent / writ petitioner is liable to pay the excess payment of Rs.4,92,723/- as per the proceedings dated 27.05.2019; and the third respondent is liable to pay interest at the rate of 9% per annum on the recovery amount for his act of enabling illegal pay revision for the first respondent / writ petitioner by abusing his official position and authority.

14. In fine, the order passed by the learned Judge is set aside. As a sequel, the proceedings dated 27.05.2019 of the appellant for recovery of the excess payment of Rs.4,92,723/- from the first respondent / writ petitioner is restored. The appellant is directed to recover the excess amount from the first respondent / writ petitioner as stated in the recovery proceedings dated

27.05.2019 and also the interest component at the rate of 9% p.a. on the said amount from the third respondent in monthly instalments till the amount is fully recovered from the first respondent / writ petitioner.

15. This writ appeal is allowed on the above terms. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] **[M.S.Q, J.]**
25.04.2024

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Index: Yes / No.
Speaking order/ Non-speaking order
Neutral Citation: Yes / No.

To
1.The Managing Director,
The Salisbury Industrial
Co-operative Tea Factory Ltd.,
Gudalur-643 212.

2.The Joint Registrar (Tea),
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