BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).Nos.9597 to 9603 of 2022
and WMP(MD) Nos.6895 to 6899, 6901 & 6903 of 2022

In W.P(MD) No.9597 of 2022:

N.Logambal

... Petitioner

Vs

The Joint Commissioner (ST)
Erode State Tax Division,
Commercial Taxes Buildings No.1,
Brough Road, Erode - 638 001.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the respondent in Se.Mu.Na.Ka. 3762-7/2019/A2, dated 24.03.2022 and quash the same as illegal and unlawful.

For Petitioner : Mr. J.Pooventhera Rajan

For Respondents : Mr.R.Sureshkumar
Additional Government Pleader

COMMON ORDER

All the Petitioners have filed these Writ Petitions seeking to quash the respective impugned orders, which cancels the special grade pay given to the Petitioners and to recover the grade pay paid to these Petitioners.

2.Heard the learned counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondents. Perused the materials available on record.

3.The Petitioners were originally working as the staff of Khadi Board. Since 375 staff in Khadi Board were considered as excess, a decision was taken to retrench them. The Government has taken proactive measure to rescue them and issued G.O.(Ms)No.154 (Handloom, handicrafts, Textiles and Khadi (F2) Department) dated 21.11.2009 by framing guidelines for absorption of excess staff from Khadi to other Government Departments/Public-Sector Undertakings/Autonomous Bodies.

4.While issuing G.O.(Ms)No.154 (Handloom, handicrafts, Textiles and Khadi (F2) Department) dated 21.11.2009, it was made clear that the persons so absorbed in other Government Departments will be considered as new appointees and they will not get service benefits, however, they are entitled only for pay protection. But the benefit of said G.O., is not applicable to those who volunteered to retire under Voluntary Retirement Scheme.

5.Subsequently, whether Government Order in G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department), dated 12.07.2012 has been issued to consider their past services with the Khadi Board to be included for pensionary benefits.

6.The issue raised in the present batch of writ petitions is no longer a *res-integra,* as this Court has already dealt a similar issue raised in W.P.No. 1122 of 2020 etc., batch and passed the following order:

> *"9.Had the Government was consciously restricted the service protection only in respect of pensionary benefits and for counting past services with regard to eligible number of years of services, the G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012 could not have employed the word service protection. When there is explicit mention that the G.O. has been issued just to give service protection also for the employees, it goes without saying that service*

protection would include all other benefits which is known to government service.

10.The impugned order itself stated that grant of increment and special grade pay to the Petitioners with effect from 2012 was a mistake and hence it has to be stopped from the date of the respective impugned proceedings and further the monetary benefits in terms of above increment and grade pay which have already been given to the Petitioners should be recovered.

11.It is the submission of Mr.Haja Nazrudeen, learned Additional Advocate General~I that if any excess payment made due to the negligence, carelessness, collusion, favouritism, etc., or due to fraud, misrepresentation to the employees, the amount so paid to them is bound to be recovered. There cannot be no disagreement on the point that the public money is tax payers- money and if it is misused in the above manner, that is liable to be recovered and there cannot be any justification to stop recovering such payments.

12.However, in the case on hand, the Petitioners, who have got the monetary benefits in terms of increment and special grade pay did not play any fraud or misrepresentation for getting those benefits. The Government has issued G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012 and the authorities had acted upon it and only by virtue of Government Order, the monetary benefits have been given to the Petitioners. Hence, the judgment of the

Hon-ble Supreme Court held in Chandi Prasad Uniyal and others Vs. State of Uttarkhand and others reported in (2012) 8 Supreme Court Cases 417 is not applicable to the situation involved in this case.

13.Mr.J.Pooventhera Rajan, learned counsel for the Petitioner brought to the notice of this Court that earlier orders were passed by this Court for similarly placed person, who filed W.P.(MD)No.7823 of 2018. The relevant portion is extracted as under:

> *"2.The Hon-ble Supreme Court, in the case of State of Punjab & Others vs. Rafiq Masih (White Washer) reported in AIR 2015 SC 696, had held that excess payment wrongly made by the Department to the employee, who belongs to Group~C and Group~D, is impermissible in law. If that be the legal position, the present impugned orders, alleging that the scale of pay of the petitioners were wrongfully fixed and excess payments have been made, cannot be sustained. Furthermore, it is not in dispute that the petitioners herein, who were serving as Office Assistants, belong to Group~D category and therefore, by applying the ratio laid down in the White Washer-s case (supra), such re~fixation and the consequential recovery under the impugned order, cannot be sustained. 3.Accordingly, the impugned proceedings of the first respondent dated 19.12.2017 and the consequential impugned order*

of the third respondent dated 15.03.2018 are quashed.

4.This Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed."

14.In yet another case in C.Vijayalakshmi Vs. The Joint Commissioner (ST) Chennai South Division (W.P.(MD).No.4967 of 2020), the Madurai Bench of this Court has held as under:

"9. In the decision of the Hon'ble Supreme Court rendered in the case of State of Punjab and others Vs. Rafik Masih (White Washer) and others reported in 2015(4) SCC~334 and referred paragraph No.12, wherein, it was held as follows :

"12. 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."

10. In view of the settled proposition of law laid down by the Hon'ble Apex Court, the Recovery proceedings, initiated by the respondents is not sustainable, and accordingly, the present impugned order is quashed."

15.Mr.J.Pooventhera Rajan, learned counsel for the Petitioner cited the decision rendered in 'White Washers' case to canvas his point that the stipulation made in White

Washers case is applicable to the Petitioners and even for the sake argument, if the payment made to the Petitioners are considered excess, it cannot be recovered. In paragraph 12 of the White Washers case the following summary has been given:

> *"12. 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.'

16.No doubt, the Petitioner who are working as Junior Assistants would fall under Class IV employees and some of them had retired from service and the recovery is sought to be made after five years. So the conditions (i) to (iii) are squarely applicable to facts of the case. However, in the case on hand, it is not excess payment but the payment due to be paid to the Petitioners, and hence it cannot even be considered as excess payment and hence no need to give the concession.

17.Because there is a conceivable difference between concession and entitlement. The -entitlement- represents a right which can be exercised or claimed and the concession in a relaxation or liberty given by someone at his discretion, and hence the receiver cannot have any control or claim over concession. What is being enjoyed by the Petitioners are only entitlement derived from G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012. Hence the impugned order issued for recovery of the payment already made and to stop making further payment is due to misinterpretation *and misunderstanding of the scope of the above Government Order.*

18.In view of the above stated reasons, the impugned orders in the respect Writ Petitions are set aside and these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."

7.As the issue has already been covered and dealt in the above Judgment and the petitioners in the said case were given with the relief, the same is appliable for this case as well.

8.Hence, these writ petitions are allowed and the impugned orders, dated 24.03.2022 are set aside. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To
The Joint Commissioner (ST)
Erode State Tax Division,
Commercial Taxes Buildings No.1,
Brough Road, Erode 638 001.

R.N.MANJULA, J.

PNM

COMMON ORDER IN
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