



W.A.(MD)No.1248 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.07.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.1248 of 2024
and
C.M.P.(MD)No.9642 of 2024**

1.The Government of Tamil Nadu,
Agricultural Department,
represented by its Secretary,
Fort St.George, Chennai – 600 009.

2.The Director of Agricultural Marketing and
Agri. Businesses, Sippet Road, Thiru.V.Ka.Industrial Estate,
Guindy, Chennai – 600 032.

3.The Secretary,
Tiruchirapalli Market Committee,
Tiruchirapalli – 620 008.

... Appellants

VS

1.C.Kaliyaperumal
2.The Accountant General (A&E),
No.361, Anna Salai, Chennai – 600 018.

...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 09.03.2022 passed in W.P(MD)No.5944 of 2019.



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For Appellants :Mr.A.Kannan
Additional Government Pleader
For R1 :Mr.A.Baskara Subramania Raja

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

This intra-Court appeal is preferred against the order, dated 09.03.2022 made in W.P.(MD)No.5944 of 2019, wherein, order impugned in the Writ Petition to recover the excess salary paid towards notional promotion was set aside.

2.The first respondent/Writ Petitioner, who was appointed as Junior Assistant in the Tamil Nadu Agricultural Produce Marketing Committee, Trichy, on 12.07.1984, was promoted as Supervisor on 25.11.1999 and after getting a Selection Grade on 25.11.2009, was subsequently, promoted as Superintendent on 30.12.2010. In the common seniority list prepared, in terms of the amendment made to the Sub Rules vide G.O.(Ms)No.449, dated 16.08.1995, the State was treated as an Unit and the seniority list was fixed for the period from 16.08.1995 to 31.03.2011.



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3.The first respondent, while working as a Superintendent in the Tamil Nadu Agricultural Produce Marketing Committee, retired from service on attaining the age of superannuation on 31.01.2015. Just prior to his retirement, on 07.01.2015, an order of recovery has been issued stating that the excess payment made in view of the notional promotion is to be recovered. As no show cause notice was issued putting the first respondent on notice by providing an opportunity, the first respondent had preferred the Writ Petition. The Writ Court, after taking note of the proceedings of the Director of Agricultural Marketing and Agri Business, dated 26.04.2013, wherein, it was directed that the monetary benefits already extended need not be recovered, came to the conclusion that the impugned order of recovery is in violation of the order passed by the Head of the Department and as such, quashed the impugned order and assailing the same, the State has preferred the above appeal.

4.The learned Additional Government Pleader appearing for the appellants argued that prior to the year 1995, the District was considered as an Unit for appointment, seniority and promotion and whereas, pursuant to the amendment made in Rule-9 after 1995, the entire State has been made as



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an Unit. The learned Additional Government Pleader further contended that when one of the employees had filed a Writ Petition claiming re-fixation of seniority based on the amended Rule, the appellants were directed to prepare a State wise common seniority list in terms of the amended Rule and the appeal preferred by the State was also came to be dismissed and only pursuant to which, the modification in the date of promotion came to be altered in view of the notional promotion granted.

5.It is further submitted that in fact, the second appellant, by proceedings, dated 26.04.2013, had made it clear that even though the modification in the date of promotion is made, however, the monetary benefits, if any, already availed by the incumbents alone will not be recovered. But, however, their pay should be fixed based on their promotion order from the date mentioned against the names attached with the annexures in the order. The learned Additional Government Pleader further submitted that pursuant to the impugned order, only the payment made after this period, ie., 2013, was alone sought to be recovered, but however, the learned Judge had erroneously quashed the order of recovery by relying on the proceedings of the second appellant, dated 26.04.2013,



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which is un-sustainable, he contended and sought for interference of this Court.

6.The learned Counsel appearing for the first respondent submitted that the first respondent had already attained superannuation on 31.01.2015 and only just prior to his retirement, the impugned order of recovery was issued without affording any opportunity to the first respondent. The learned Counsel further submitted that when the second appellant had already passed orders making it clear that the benefits extended to the employees need not be disturbed or recovered, the present order of recovery came to be passed, which is arbitrary. It is further contended that insofar as the similarly placed employees are concerned, the appellants have not proceeded for recovery and have in fact, extended the benefits, but however, the first respondent alone is discriminated and the learned Judge, by taking note of the proceedings of the second appellant, had quashed the order of recovery, which needs no interference and sought for dismissal of the appeal.

7.Heard the submissions made on either side and perused the



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materials available on record.

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8.The first respondent, who had been appointed as Junior Assistant in the second appellant Department as early as on 12.07.1984, was initially promoted as Supervisor on 25.11.1999 and subsequently, was promoted as Superintendent from 30.12.2010 onwards. Later, the first respondent retired from service on 31.01.2015 on attaining the age of superannuation. Just prior to his retirement, the impugned order of recovery, dated 07.01.2015, came to be passed by which, a sum of Rs.39,082/- was sought to be recovered.

9.It is the contention of the appellants that since the District was considered to be as an Unit prior to 16.08.1995 for the purpose of appointment, seniority and promotion and later, in view of amendment in Rule 9, the entire State was made as an Unit. Therefore, for the purpose of appointment to service, seniority and promotion, the State shall be considered as an Unit. Only, later in a Writ Petition filed by an employee claiming for re-fixation of seniority, a direction was issued by the Writ Court in W.PNo.2622 of 2004, dated 19.07.2007, whereby, the appellants were directed to prepare a State wise common seniority list, pursuant to the



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amended Rule and the appeal preferred by the State also ultimately came to be dismissed. Only when the directions were implemented by preparing a common seniority list, the date of promotions effected to the employees came to be altered.

10.At this juncture, it is relevant to note that when the modifications in the date of promotion were made, the second appellant/Director of Agricultural Marketing and Agri Business, by order, dated 26.04.2013, had given the following directions:

“Consequent to the modifications in the date of promotions, the monetary benefits if any already availed by the incumbents concerned need not be recovered. However, their pay should be fixed based on this promotion orders from the date mentioned against their names vide Annexure I and II of this order. Further it is ordered that the employees will be eligible to get the monetary benefits only from the date from which they actually officiated in the particular post as per proviso Rule 27(17) of the Fundamental Rules.”

11.Only in view of the above proceedings issued by the Head of the Department, the Writ Court by taking note of the fact that even though there had been a modification in the date of promotion, as it has already been directed by the Director, Agricultural Marketing and Agri Business that the



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monetary benefits, if any, already availed by the incumbents concerned need not be recovered, the learned Judge by also taking note of the fact that the first respondent had already been retired from service on 31.01.2015, had quashed the order of recovery.

12.It is an admitted fact that the first respondent, who had been promoted as Superintendent as early as on 30.12.2010, has worked in the post of Superintendent and had retired from service on 31.01.2015 on attaining the age of superannuation. Only when the direction issued by the Writ Court in respect to preparation of common seniority list was implemented, there had been modification in the date of promotion effected to the incumbents and only considering such circumstances, the proceedings of the second appellant, dated 26.04.2013, came to be issued, wherein, the monetary benefits already extended to the incumbents including the first respondent came to be saved from recovery. In such circumstances, when the first respondent had worked in the post of Superintendent and had also got retired from service and particularly, when the benefits received by him due to the notional promotion was saved by the proceedings of the second appellant, the order of recovery issued as against the first respondent to



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recover a sum of Rs.39,082/- on the ground that only the benefits paid prior to 26.04.2013 is saved and this amount after this period is liable to be recovered, is not sustainable.

13.Only by taking note of all these aspects and also the peculiar facts in the present case, where the first respondent had worked as Superintendent and had retired from service, the learned Judge had arrived at a finding that the order of recovery issued as against the first respondent is un-sustainable and we find no error or infirmity in the approach of the learned Judge warranting interference of this Court. Therefore, the order of the learned Judge is sustained and accordingly, this Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
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AND

G.ARUL MURUGAN, J.

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Judgment made in
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