BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.15851 of 2023
and
W.M.P.(MD)Nos.13261 and 13265 of 2023

1.A.Subramanian
2.S.Mu.Pudathy
3.P.Pitchaikannu
4.S.Irulachi
5.R.Esakkidurai
6.S.Kannan
7.S.Premma Nayakam
8.M.Panndarasamy
9.N.Sivasubbiramaniyan
10.M.Murugan
11.R.Ramachandiran ... Petitioners

Vs.

1.The Director,
Sericulture Department,
Asthampatti,
Salem – 636 007.

2.The Assistant Director,
Sericulture Department,
Tenkasi,
Tenkasi District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondents in connection with the impugned orders passed by them vide proceedings in Se.Mu.No. 4102/Aa/2011 dated 24.03.2014 by the second respondent and in Na.Ka.No.11438/M3/2020 dated 22.07.2021 and quash the both as illegal and arbitrary and consequently direct the respondents to reimburse the recovered amount and thereby direct them to pay the petitioner's salary in accordance with 6th and 7th pay commission.

For Petitioners : Mr.G.Thalaimuthurasu
For Respondents : Mr.M.Siddtharthan
Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings in Se.Mu.No.4102/Aa/2011 dated 24.03.2014 by the second respondent and in Na.Ka.No.11438/M3/2020 dated 22.07.2021 and to direct the respondents to reimburse the recovered amount and thereby direct them to pay the petitioner's salary in accordance with 6th and 7th pay commission.

2.All the petitioners joined as Farm Labourers/Sericulture Workers in the second respondent Department in the year 1985. They have completed more than 10 years of service as daily wage workers. As per G.O.Ms.No.22, Personal and Administrative Reforms Department dated 28.02.2006, the Government directed that the services of the daily wages employees working in the Government units of the various Departments who have rendered 10 years of service as on 01.01.2006 to be regularized by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned. Based on the first respondent's proposals, the Government regularized the service of 520 Casual Daily Wage Labourers including the petitioners, relaxing Rule 4 of the Service Rules and created super numeric posts up to the date of retirement/date of death in the revised scale of pay of Rs.2,500-5,000/- + Grade Pay Rs.500/- with effect from 23.02.2010 vide G.O.(Rt)No.25, Handlooms, Handicrafts, Textiles and Khadi Department dated 23.02.2010. Based on this G.O., the petitioners service were regularized into Special Time Scale of Pay Workers vide second respondent's proceedings dated 28.04.2010. Under such circumstances, the second respondent vide proceedings dated 24.03.2014 initiated recovery proceedings against the petitioners stating that they were overpaid with dearness allowances during the period from 01.04.2004 to 31.08.2011.

3.Accordingly, listing the petitioners name all the amounts as mentioned in the orders were recovered from the petitioners in an arbitrary manner. All the petitioners are Basic Service Employees and the increment drawn were not because of their mistake and the mistake is fully attributable to the employers, who erroneously calculated the dearness allowance. This Court in a batch of Writ Petitions in W.P.(MD)Nos.14977, 15614 to 15616 of 2011 dated 24.11.2023 has held that Sericulture Workers will come under the basic service category and they are entitled to serve in the respondent office till completion of 60 years of age. That apart, it is the claim of the petitioners that the Sericulture Workers/Labourers were receiving salary less than that of the basic service servant and hence, the respondents are duty bound to revise their salary in accordance with the 6^{th} and 7^{th} pay commission. But without considering these aspects, the second respondent has simply rejected the claim of the Sericulture Workers vide proceedings dated 22.07.2021 in an arbitrary manner. Hence, challenging the impugned recovery order dated 24.03.2014 and the impugned rejection order dated 22.07.2021 passed by the second respondent, this Writ Petition came to be filed.

4.The learned counsel for the petitioners submitted that both the impugned orders are *per se* illegal and arbitrary. He insisted that in terms of the judgment of the Hon'ble Apex Court in the case of ***State of Punjab and others versus Rafiq Masih (White Washer) and others*** reported in ***2015 (4) SCC 334***, the respondents cannot recover over payment for no fault of the employees that too who belong to basic services or Group-C and D services. Since the petitioners are considered below the basic service or Group-C and D service, the recovery proceedings initiated by the respondents are fully illegal. He further submitted that the Sericulture Workers/Labourers have rendered more than 35 years of service and are receiving their salary less than that of the basic servant. Hence, the respondents are duty bound to revise their salary in accordance with 6th and 7th pay commission. Since this Court has already categorically held in W.P.(MD)No.14977 of 2011, batch by its order dated 24.07.2023 that Sericulture Workers will fall under the category of basic service employees and hence, they are entitled to serve in the respondents office till the completion of 60 years of age, the respondents ought to have appreciated the petitioners request for revision of their salary in accordance with 6th and 7th pay commission. On the other hand, rejection of the petitioners' representation would amount to colourable exercise of power and on that basis, pressed for allowing the Writ Petition.

5.Per contra, the second respondent has filed a counter and the learned Additional Government Pleader for the respondent submitted that the petitioners were appointed as Daily Wage Workers in the Sericulture Department under the control of the Assistant Director of Sericulture, Tenkasi/second respondent office purely on temporary daily wages basis on part time. Pursuant to the issuance of G.O.Ms.No.22 Personal and Administrative Reforms Department dated 28.02.2006 the Government regularized the service of 520 Casual Labourers including the petitioners and brought them under a special time scale of pay with a proceedings of the second respondent dated 28.04.2010. During the year 2011, it was found out by the Director of Sericulture that dearness allowances has been paid in excess over and above the rate fixed by the Government to the workers working in the second respondent in the Sericulture Department for the period from 01.04.2004 to 31.08.2011. Since the dearness allowance paid was in excess over and above the dearness allowance fixed by the

Commissioner of Labour Department, Chennai, the first respondent in his letters dated 28.09.2011 and 04.06.2013 instructed to recover the excess dearness allowance paid to the Workers from all the Labourers to safeguard the Government funds. Accordingly, the second respondent by his proceedings dated 24.03.2014 passed an order of recovery at Rs.500/- per month from the salary of the petitioners towards the excess dearness allowance paid to the petitioners whoever received in excess over and above the rate fixed by the Government. The said fact was properly intimated to all the Workers including the petitioners. Accordingly, a total amount of Rs.9,29,160/- was calculated to have been paid excessively to the petitioners and an amount of Rs. 8,40,152/- has been recovered from the petitioners up to June 2023. As far as M. Pandarasamy, a balanced amount of Rs.43,367/- and R. Ramachandran, an amount of Rs. 45,641/- is yet to be recovered. However, the entire exercise of recovery has been made by issuing a prior show cause notice before effecting recovery of excess payment.

6.The unit officer that is a farm and silk reeling unit or Officer in charge under whom the petitioners was directly working duly informed about the excess payment and the recovery of the same from each and every workers and their consent for recovery in easily monthly instalments was also obtained. Only after informing in advance through their immediate superiors and Officers in Charge, the respondents issued the recovery order and effected the recoveries in instalment basis. Submitting that the recovery of excess dearness allowance paid to the petitioners were ordered as per Rules followed in all the Government Departments, the learned Additional Government Pleader insisted for dismissal of the Writ Petition.

7.That apart the Government regularized the service of 520 Casual Labourers including the petitioners by relaxing Rule 4 of the Service Rules and without consulting the employment exchange by creating super numeric posts up to the date of the retirement/date of death and sanctioned revised special time scale of pay of Rs. 2,500-5,000/- + Grade Pay Rs.500/- with effect from 23.02.2010 with a G.O.(Rt)No.25 dated 23.02.2010. Hence, the claim of the petitioners to revise their salary in accordance with 6^{th} and 7^{th} pay commissions will never arise and the impugned order passed by the second respondent on 22.07.2021 rejecting the petitioners claim for revision of salary in accordance with 6th and 7th pay commissions is fully sustainable in law. On that basis, he pressed for dismissal of the Writ Petition.

8.Heard the learned counsel appearing for the petitioners, the learned Additional Government Pleader appearing for the respondents and carefully perused the entire materials available on record.

9.On perusal of the impugned order, it is seen that the excess amount of dearness allowance has been paid to the petitioners from 01.04.2004 to 31.08.2011. However, the order of recovery has been passed in the year 2014. This Court is of the considered opinion that even if excess amount of dearness allowance has been paid during the period 01.04.2004 to 31.08.2011, the same cannot be recovered after a lapse of long years, in view of the legal principles settled by the Hon'ble Supreme Court of India in the case of ***State of Punjab and others V. Rafiq Masih, (Whitewasher) and others*** reported in ***2015 (4) SCC 334*** and the relevant 8th paragraph of the judgment is extracted hereunder:-

> *"8. 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.As per the dictum settled by the Hon'ble Apex Court, the excess amount of dearness allowance if any paid to the employees who are working in Class 4 category cannot be recovered. The errors if any committed in fixing the dearness allowance/pay alone can be corrected. However, the excess already paid cannot be recovered from Class 4 employees. In view of this fact, the impugned order dated 24.03.2014 passed is in violation of the legal principles settled by the Hon'ble Apex Court of India and accordingly, the impugned orders of recovery passed by the respondent in proceedings bearing Se.Mu.No.4102/Aa/2011 dated 24.03.2014 is hereby quashed. Consequently, the respondents are directed to reimburse the recovered amount, if any within a period of 12 weeks from the date of receipt of copy of this order.

11.As far as the second limb of prayer sought for by the petitioners to revise their special scale of pay in accordance with the 6th and 7th pay commission, this Court is of the considered view that the petitioners cannot claim any benefit of pay revision as a matter of right without the Government's ability to bear the bad burden of such pay increase. Extension of pay revision in terms of 6th and 7th pay commission to the daily wages who were who were regularized as per the mandates of G.O.Ms.No.22 dated 28.02.2006 and later brought under special time scale of pay acknowledging their long service for more for several decades by creating super numeric posts till the retirement/death, would depend on various considerations including financial constraints and the number of employees involved. The paying capacity of an employer is an important and valid aspect of such an exercise. If these factors are kept in mind appreciating the request of the petitioners to revise their salary in accordance with 6th and 7th pay commissions who are on the rolls of the second respondent is certainly a policy decision of the Government which has to be duly decided by the Government. The question as to whether and what should be the extent of pay revision are undoubtedly matters falling within the domain of executive policy making.

12.That apart the petitioners were regularized by relaxing Rule 4 of the Service Rules and without consulting the employment exchange/Tamil Nadu Public Service Commission, thereby creating super numeric posts to an extent of 520 posts till their life/retirement by fixing a special time scale of pay which will fall under the category of nonstandard scale of pay. The special time scale of pay is categorized as nonstandard scale of pay for the reason that those 520 posts or super numeric posts and are not cadre posts and the said super numeric posts will be exhausted on the death or retirement of these respective 520 Casual Labourers, who are given the benefit of G.O.Ms.No.22 dated 28.02.2006. The said exercise has been done by the Government as a one-time measure. Hence, the petitioners are not entitled to seek revision of pay in accordance with 6th and 7th pay commissions on par with the employees of basic services, who are recruited in the permanent cadre posts of the Government.

13.With such observation, this Court is of the considered view that the impugned order passed by the second respondent while proceedings in Na.Ka.No.11438/M3/2020 dated 22.07.2021 rejecting the petitioner's claim to revise their salary in accordance with 6th and 7th pay commission need not be interfered.

14.Accordingly, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

L.VICTORIA GOWRI, J.

Mrn

To

1.The Director,
Sericulture Department,
Asthampatti,
Salem – 636 007.

2.The Assistant Director,
Sericulture Department,
Tenkasi,
Tenkasi District.

W.P.(MD)No.15851 of 2023

22.03.2024