IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2025

CORAM:

THE HONOURABLE MRS. JUSTICE **N.MALA**

W.P.No.7225 of 2022
and WMP.Nos.7251 & 7252 of 2022

D.Ranganathan ... Petitioner

Vs

1. The Managing Director
Tamil Nadu Co-operative Producer's
Federation Ltd.,
Revenue Department, Aavin Illam,
Mathavapuram, Milk Colony,
Chennai 600 051.

2. The Commissioner of Milk Production
and Dairy Development,
Chennai 600 061.

3. The General Manager
Kancheepuram Thiruvallur District,
Co-operative Milk Producers
Union Ltd X-37
No.55, Guruvappa Street,
Ayanavaram, Chennai - 600 023. .... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus to call for the records made in Ref.No.4759/Admin/2018 dated 29.11.2021 on the file of the third respondent and to quash the same as illegal, arbitrary non-est and consequently direct the respondents to pay salary and other service benefits in terms of order dated 03.08.2018 and 10.11.2018 made in Na.Na.4759/Admin/2018 and return the recovery amount to the petitioner's account.

For Petitioner : M/s.N.Lavanya
for Mr.E.C.Ramesh

For Respondents : Mr.R.Sanchithanandan
for Mr.V.Rajnikanh
Standing Counsel for R1 & R3
No appearance for R2

ORDER

This writ petition is filed for issuance of a writ of certiorarified mandamus to call for the records in Ref.No.4759/Admin/2018 dated 29.11.2021, to quash the same as illegal, arbitrary non-est and consequently direct the respondents to pay salary and other service benefits in terms of order dated 03.08.2018 and 10.11.2018 made in Na.Na.4759/Admin/2018 and refund the amount recovered from the petitioner's account.

2. The learned counsel for the petitioner submitted that the third respondent without prior notice to the petitioner passed the impugned order revising the pay scale of the petitioner and directing recovery of the excess pay made to him in total violation of principles of natural justice. The learned counsel for the petitioner relied on the judgments of the Hon'ble Supreme Court in the case of ***Jagdish Prasad Singh Vs State of Bihar and others*** reported in 2024 SCC online SC 1909 and ***State of Punjab and others Vs Rafiq Masih (While Washer) and others*** reported in (2015) 4 SCC 3334 in support of his contention.

3. The learned Standing Counsel for the respondents 1 & 3 submitted that as the pay scale of the petitioner in the Selection Grade post of Technicians (Operation) was found to be more than the ordinary grade scale of pay of the promotion post of Executive (Engg), the pay scale was revised and the excess payment made to the petitioner was sought to be recovered. According to the learned Standing Counsel, as per the Government order and rules, the scale of pay in the selection grade in the cadre of Technicians (Operation), feeder category to the post of

Executive (Engg) should be restricted to the ordinary grade pay scale of promotional post. However, in respect of the Technicians (Operation) higher pay scale in the selection grade post was extended which was above the ordinary grade scale of the promotional post and therefore to rectify the anomoly, the impugned order was passed. The learned Standing Counsel therefore submitted that there was no infirmity in the impugned order and hence the writ petition was devoid of merits.

4. Heard both sides and perused the materials available on record.

5. The facts are undisputed. The petitioner completed ITI Diploma (Mechanical Engineer) and was appointed as Technician (Operator) Grade - I on 07.04.1990 in the third respondent Co-operative Milk Producer's Union after following regular processes of recruitment. The petitioner was promoted from Special Grade Technician (Operator) to Executive (Engg) on 05.03.2018. Earlier the Technician Grade-I and boiler Grade-II submitted a representation to the competent authority for revision of pay scale in the cadre of selection grade and special grade in

the terms of 6th pay commission. To avoid anomoly in the pay scale of Technicians, the first respondent by proceeding dated 04.08.2018 and 10.11.2018, directed the third respondent society to revise the pay scale of Technicians Grade-I (Executive Engineer) notionally with effect from 01.06.1986 and with monetary benefits from 01.04.2013. Accordingly, the third respondent by proceeding dated 17.02.2018, revised the petitioner's pay scale notionally with effect from 14.10.1987 and with monetary benefits from 01.04.2013. The petitioner was receiving salary and all other benefits based upon such revised pay scale from 01.04.2013. While so, based on the impugned order dated 29.11.2021 passed without notice to the petitioner, the petitioner's pay scale was revised and consequently recovery of the excess pay was also ordered. The third respondent ordered to recover the excess payment of Rs.14,00,000/- from the salary of the petitioner in monthly installments. Deductions were made from the petitioner's salary since December 2021. As the impugned order revising the petitioner's pay scale and recovering the excess payment was made without any notice to the petitioner, the petitioner filed the above writ petition for the aforesaid relief.

6. As rightly contended by the learned counsel for the petitioner, recovery of the amount paid during the period from 2013 till the date of the impugned order is against the judgment 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 3334. The Hon'ble Supreme Court in the said judgment summarised the principles on recovery 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 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 to 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".

In my considered view clauses (iii) and (v) of the aforesaid judgment squarely apply to the facts of the present case. The excess payments made to the petitioner for the period commencing from 01.04.2013 is now sought to be recovered from the petitioner's salary by virtue of the impugned order dated 29.11.2021. Since recovery is sought for a period exceeding 5 years it is impermissible as it clearly falls foul of clause (iii) of the judgment. Moreover, the recovery is sought to be effected from the terminal benefits of the petitioner. If an amount of Rs.14,00,000/- is deducted from the terminal benefits, the petitioner would suffer considerable hardship. Such recovery would also be patently inequitable, especially when the petitioner had no role whatsoever in the excess payment, which admittedly resulted from an error on the part of the respondents. Therefore clause (v) of the aforesaid judgment would squarely apply.

7. It is evident from the records that even the re-fixation of pay was made without prior notice to the petitioner. When re-fixation of pay is effected without prior notice, it results in drastic civil consequences. At the very least, the petitioner ought to have been put on notice before the re-fixation. In my view, the failure to issue prior notice before re-fixation of the pay scale is violative of the principles of natural justice and hence it cannot be sustained. At this juncture, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***Jagdish Prasad Singh Vs State of Bihar and others*** reported in 2024 SCC online SC 1909. The relevant para is extracted below:-

> ***"26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the***

> ***post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence the same cannot be sustained".***

The aforesaid judgment squarely applies to the facts of the present case.

8. In view of the above discussions, the impugned order is set aside as illegal and invalid. A direction is issued to the respondents to pay salary and other service benefits in terms of order dated 03.08.2018 and 10.11.2018 and to further refund the amounts recovered from the petitioner, within a period of 12 weeks, from the date of receipt of a copy of this order, failing which the respondents shall pay interest @ 6% p.a. from the date of receipt of a copy of this order till actual payment made.

9. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition are also closed.

23.04.2025

dpq (2/2)
Index: Yes/No
Speaking order / Non speaking order

N.MALA, J.

dpq

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