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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.06.2025

PRONOUNCED ON: 07.07.2025

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

WP NO. 24697 of 2016

AND

WMP NO. 21078 OF 2016

T.Thagapillai
S/o.Thirumalai, Vocational Instructor,
Government Model Higher Secondary School,
Saidapet, Chennai District.

Petitioner(s)

Vs

1.The Government of Tamil Nadu,
Rep by Secretary to the Government, Finance
(Pay Cell) Department, Fort St.George,

Chennai -9

2. The Secretary to the
Government, Government of Tamil Nadu, School Education Department,
Fort St. George, Chennai 9

3. The Director of School
Education, College Road, Chennai 6

4. The Chief Educational Officer,
Chennai District, Chennai

5. The Headmaster,
Government Model Higher Secondary School, Saidapet, Chennai District.

6. The Finance Advisor and
the Chief Accounts Officer, College Road, Chennai 6

Respondent(s)

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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 of the 5th respondent in relation to proceedings issued in Na.Ka.No.71/2016 dated 05.04.2016, and quash the same and issue a consequential direction to the respondents to restore the selection grade scale of pay of the petitioner at Rs.15600-39100+5400 GP with notional benefits from 01.01.2006 and monetary benefits from 01.01.2011 with all consequential benefits.

For Petitioner(s): Mr.R.Saseetharan

For Respondent(s): M/s R.L.Karthika, GA for R-1
M/s P.Rajarajeswari, for RR2 to 6

ORDER

This petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 5th respondent in relation to proceedings issued in Na.Ka.No.71/2016 dated 05.04.2016, and quash the same and issue a consequential direction to the respondents to restore the selection grade scale of pay of the petitioner at Rs.15600-39100+5400 GP with notional benefits from 01.01.2006 and monetary benefits from 01.01.2011 with all consequential benefits.

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2.The petitioner was initially appointed as Double Part Time Vocational Instructor in Auditing and Accountancy on 02.01.1989 at Government Model Higher Secondary School, Saidapet, Chennai on consolidated pay. He was then appointed on regular time scale of pay as Vocational Instructor with effect from 23.09.1994 in the time scale of pay of Rs.1400-2600. This was the scale of pay for the post of B.T. Assistant also. He was absorbed by order dated 23.12.1994 of the Chief Educational Officer, Chennai District. The services in the post of Vocational Instructor was regularized from 16.10.1992 by proceedings of the Joint Director of School Education dated 31.05.2007. The scale of pay was given in accordance with the recommendation of the Official Pay Committee which was introduced with effect from 01.01.1996, by proceedings dated 24.06.2008 of the Headmaster, Government Model Higher Secondary School, Saidapet, Chennai District.

3. It must be pointed out that the Government had brought in a policy change by introducing 10 + 2 course in schools abolishing 11 + Pre University Course which was in effect earlier. When the Higher Secondary Course or Plus Two was introduced, several new subjects were also

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introduced. This necessitated appointment of instructors, who were called Vocational Instructors to take those particular subjects.

4. Among other subjects, one was Computer Science, as an example. It was not in the main stream of school education prior to introduction of the Higher Secondary Pattern. The Vocational Instructors were not absorbed as Teachers in the initial period. However, they discharged the teaching work for higher secondary schools. There was also a concept of Single Part Time Vocational Teacher and Double Part Time Vocational Teacher. Then there was an issue of equalizing both of them. Finally, there was an issue of regularizing the Vocational Teachers and bringing them into the main streamline as teachers of the school.

5. The petitioner herein, as seen from the above, was also appointed as Double Part Time Vocational Instructor in Auditing and Accountancy, which subject was introduced only for the Higher Secondary, the plus two course. The teachers, who took the normal classes were not qualified to take that particular subject at the higher secondary level.

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6. The petitioner, therefore, taught students in the higher secondary level at Government Higher Secondary School at Saidapet, Chennai District. He was termed as Single Part Time Vocational Instructor. Subsequently, as seen, his services were regularized with effect from 01.04.1990. Thereafter, he was also granted Selection Grade scale of pay again in the post of Vocational Instructor by proceedings dated 10.07.2008 with effect from 23.09.1994 onwards. His pay was fixed in the scale of pay of Rs.6500-10500, which was equal to the earlier Selection Grade scale of pay for B.T. Assistant Teachers.

7. Thereafter, Rules were framed for Vocational Instructors and in this regard a Government Order was passed in G.O.(Ms).No.6 dated 04.01.2000. Yet another Government Order was passed in G.O.(Ms).No.234 dated 01.06.2009, wherein, a revised pay of scale was introduced in accordance with the recommendations of the Official Pay Committee constituted by the State Government. It could also be termed as a One Man Pay Revision Committee to examine the fixation of pay. The pay band for the post of B.T. Assistant was Rs. 9300 - 34800 with 4400 GP. The concept of Grade Pay came to be introduced by G.O.(Ms) No.234 dated 01.06.2009.

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It was also stated that this particular pay band was also applicable to Vocational Instructors like the petitioner herein.

8.But specific pay was not fixed for Selection Grade / Special Grade scale of pay. This led to an anomaly and the District Educational Officer came to recognize the pay of some of them and not for all. A proposal was sent by the Headmasters of the schools. Some of them were accepted and some were rejected. Thereafter Selection / Special Grade of scales of pay was finally fixed with effect from 01.01.2006 by Government Letter dated 08.11.2010. This was, however, fixed only notionally with effect from 01.01.2006 and monetary benefits were granted from 01.01.2011. The scale of pay band were re-fixed in the pay band of Rs.9300 -34000 + 4600 GP, with Rs.15600 - 39100 + 5400 GP. This was for Selection Grade of scale of pay.

9. Since there was no effective uniform application, the sixth respondent, came to re-examine the pay scales which had been fixed, particularly for Vocational Instructors and started issuing notices or letters of proceedings seeking recovery of pay claiming that the pay scale had been

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wrongly determined. The petitioner is one such who has been issued with such recovery proceedings. The Writ Petition has been filed seeking interference with the recovery proceedings which primarily sought recovery of pay which, according to the sixth respondent, were paid over and above the scale of pay, which should have been re-paid by the petitioner herein.

10. The issue therefore now crystallizes to the recovery for the period between 01.01.2011 and 31.03.2013 as could be seen from the letter, dated 01.03.2016, wherein, based on audit objection, requested to recover the excess pay and allowances paid for the period from 01.01.2011 to 31.03.2013 from the teachers concerned including the petitioner.

11. It must be kept in mind that, the said pay to the petitioner herein was not on the basis of any representation made by the petitioner but consequent to a letter of the Government dated 08.11.2010 which granted monetary benefits from 01.01.2011 and fixed the pay notionally from 01.01.2006. This particular aspect had come to the consideration of the Courts and learned counsel for the petitioner had produced before this Court earlier judgments on this very aspect:-

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12.1. In N.Rajendran and another Vs. The Government of Tamil Nadu, Rep. by its Secretary and Others [W.P.Nos.11999 & 12000 of 2013 dated 23.10.2019], this Court held as follows:-

> *"3.However, by an order dated 28.03.2013, the pay was re-fixed and was revised to a lower level pay of Rs.9300/- with grade pay of Rs.4600/-. There was an order also to recover the excess amount paid to the petitioners from 01.01.2011. However, the Government passed G.O.Ms.No.306 Finance (CMPS) Department dated 12.09.2018, increasing the pay of the petitioners from 4600 to 5400 from 01.04.2013. The petitioners are therefore now faced with the recovery of excess amount which was paid to them from 01.01.2011 to 31.03.2013. It is well settled that if excess payment is made by the employer by applying wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, then, when such employees are asked to pay the excess amount they would be faced with hardship, when the amount is sought to be recovered from them and if there was no misrepresentation or fraud by the employee in grant of excess amount of pay, and it should not be recovered. The Hon-ble Supreme Court in Syd Abdul and Other .Vs. State*

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of Bihar and Others reported in (2009) 3 SCCC 475, as observed as under:

> *"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*
>
> *"58.The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib*

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Ram vs. State of Haryana, Shyam Babu Verma vs. Union of India, Union of India vs. M. Bhaskar, V. Gangaram vs. Director, Col. B.J. Akkara [Retd.] v. Government of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh & and Bihar SEB v. Bijay Bhadur."

4.In view of the above, the order for recovering the excess amount from the pay of the petitioner from 01.01.2011 to 31.03.2013 stands set aside. The Writ Petitions are disposed of on the above mentioned terms. No costs. Consequently, connected miscellaneous petitions are closed.?"

12.2. In "V.Sundararajan and another Vs. The Government of Tamil Nadu, Rep. by its Secretary, Finance (Pay Cell) Department and others" [W.P.Nos. 12787 & 12788 of 2013 dated 05.03.2020], this Court held as follows:-

"6. The relevant portion of the order of this court made in W.P.Nos.11999 and 12000 of 2013 dated 25.10.2019 reads as follows:~

"4. In view of the above, the order for recovering the excess amount from the pay of the petitioner from 01.01.2011 to 31.03.2013 stands set aside. The writ petitions are disposed of on the above mentioned terms.?

7. Considering the fact that scale of pay for the

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Vocational Instructors was fixed at Rs.15600-39100 with grade pay of Rs.5400/~ for no fault of the petitioners, but, however, the Government had subsequently recognized the anomaly and re fixed the grade pay and also on considering the fact that when the order for recovery was challenged by the similarly placed persons, this court by order dated 25.10.2019 set aside the order of recovery of excess amount paid, this court is inclined to set aside the order of recovery in respect of the petitioners also.

In the result, both writ petitions are allowed and the orders impugned in the writ petitions directing the recovery of the excess amount from the pay of the petitioners from 01.01.2011 to 31.03.2013 are set aside. Amounts, if any, already recovered from the petitioners are directed to be refunded to them within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MPs are closed."

12.3 In "V.Krishnan Vs. The Government of Tamilnadu Rep. by its Secretary, Finance (Pay Cell) Department and others" [W.P.No.2950 of 2014 etc. batch dated 03.02.2020], this Court held as follows:-

"8.It is seen from the GO.Ms.No.306, Finance (CMRC) department, dated 12.09.2018 that the grievance of the Petitioners has been met out positively by the

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Respondent. Therefore, impugned GO.Ms.No.263 Finance (Pay Cell) Department, dated 22.7.2013 and the consequential recovery proceedings cannot be given effect to. In such view of the matter, no further adjudication is required in all these Writ Petitions. The submissions of the learned Government Advocate for the State and the GO.Ms.No.306, Finance (CMRC) department, dated 12.09.2018 are recorded.

9. With the above observations, these Writ Petitions are disposed of. No costs. Consequently, the connected MPs are closed."

12.4 In "Government of Tamil Nadu, Rep by its Secretary, Finance (Pay Cell) Department and others Vs. N.Rajendran" [W.A.No.2168 of 2021 dated 02.09.2021], the Division Bench of this Court, held as follows:~

"6. The sum and substance of the case on hand is that the pay scale of the Respondent has been erroneously fixed, thereby wrong amount was paid to the employee. Thereafter, the same was ordered to be recovered and questioning the same, the Writ Petition in W.P.No.11999 of 2013 was filed, in which the learned Single Judge held that in the absence of any fraud or misrepresentation on the part of the employee, the excess amount granted should not be recovered.

7. Though the contention of the learned Government

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Advocate, appears to be sound at the first blush, a cursory look at the order dated 28/8/2003 shows that admittedly, it is a non speaking order, with regard to wrong fixation of pay to the vocational teachers. In the proceedings of the Sixth Respondent dated 28.03.2013, it has been simply stated that the pay scale, which is revised as 15600-39100+ 5400 is hereby cancelled and they have decided to refix the pay scale of 9300-34800+4600. . Though the Government is entitled to recover the amount based on the guidelines pronounced by the Apex Court, no speaking order has been passed with respect to recovery of the salary fixed on 14.10.2011 in the Impugned Order dated 28.03.2000. Therefore, in the absence of speaking order being passsed, we are of the view that the learned Judge was right in holding that there is no fraud or misappropriation on the part of the employee and that, the excess amount paid cannot be recovered."

13. The ratio laid down in the aforementioned judgments are directly applicable to the facts of this case. It had been very categorically held that ordering of recovery of excess amount from the petitioners therein from 01.01.2006 onwards cannot withstand the scrutiny of the Court and, therefore, has to be set aside.

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14. In view of the consistent dictum laid down by the learned Single Judges and also by the Division Bench of this Court, it is only obligatory on the part of this Court to follow the same dictum.

15. In view of the same, the writ petition stands allowed. The impugned order, dated 05.04.2016 issued by the 5th respondent directing the recovery of the excess amount from the pay of the petitioner from 01.01.2011 to 31.03.2013 is set aside. Amounts, if any, already recovered from the petitioner are directed to be refunded to him within a period of eight weeks from the date of receipt of a copy of this order.

No costs.

Consequently connected miscellaneous petition is closed.

07.07.2025

Index : Yes/No
Neutral Citation:Yes/No
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To

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BATTU DEVANAND, J

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Pre-Delivery Order in
Writ Petition No.24697 of 2016

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