

Court comes to rescue of 2 ex-govt staff

Says Excess Amount Paid To Them Need Not Be Returned

Chennai: The Madras high court has come to the rescue of two government officials who applied for retirement benefits and extension of pay protection but were asked to pay back about Rs 1.5 lakh each. This was on the ground that it was an 'excess' amount paid to them because they were placed in pay scales higher than those they were entitled to.

According to writ petitions by K Muthu and J Radhakrishnan, who joined as 'time keeper' at the Police Transport Workshop-cum-Training School, Avadi, in 1976 and 1980 respectively, the post was a non-promotional one then. Through an order dated November 15, 1994, the post held by Muthu and Radhakrishnan was redesignated 'Fitter-Grade I' and the revised pay scale fixed at Rs 1100-Rs 1660. Since both had been serving for more than 25 years without any promotion, the concessions given by the Sixth Pay Commission to these posts were also applicable to the petitioners and others who were similarly placed. A letter of request to the finance secretary by the Works Manager in charge of the petitioners department on June 27, 2003 sought to clarify whether it was correct that Muthu and Radhakrishnan remain in the Higher Selection Grade Scale (i.e., scale indicated in Schedule II of the Pay Commission GO) granted to them or that their selection scale be restricted to I level promotion (i.e., Fitter special ordinary grade scale — Rs 4,300-100-6,000).

Muthu, due to retire on August 31, 2004, had applied to the Finance secretary to avail himself of a portion of his retirement benefits but was told in response that the special grade pay granted to him was not restricted to the I level promotion scale. He was told to pay the excess Rs 1,42,187 from his retirement benefits. Radhakrishnan, who sent a request for extension of pay protection on June 23, 2004, was asked to pay Rs 1,85,597 for the same reason. This could be recovered at the rate of Rs 4,500 a month in 42 installments, the government reply said.

Passing orders on the case, Justice V Dhanapalan referred to a judgment dated November 9, 2010 as the facts were similar in both cases. Pointing out that the petitioners hadn't made any misrepresentation or exercised fraud to get the amount and taking the factual situation into consideration, the court ordered that the recovery of the excess amount be quashed. TNN"

IN

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2011

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THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.Nos.28785 of 2004 and 6713 of 2007

and

M.P.Nos.1 and 2 of 2007

K.Muthu .. Petitioner in WP No.28785/2004 J.Radhakrishnan .. Petitioner
in WP No.6713/2007

vs.

1.Government of Tamil Nadu Rep. by its Secretary to Government Fort St.George
Chennai 600 009.

2.Director General of Police Mylapore Chennai 600 004.

3.Inspector General of Police Armed Force Chennai 600 010.

4.Automobile Engineer Incharge Works Manager Police Transport Workshop-
cum-Training School Avadi Chennai 600 054. .. Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India for the relief sought for as stated
therein. For Petitioners :

Mr.S.Silambanan Senior Counsel For Respondents: Mr.S.Gopinathan Additional Government
Pleader for RR1 to 3 No appearance for R4

COMMON ORDER Heard Mr.S.Silambanan, learned senior counsel appearing for the petitioners
and Mr.S.Gopinathan, learned Additional Government Pleader for Respondents 1 to 3. 2. Prayer in
W.P.No.287685 of 2004 is for the issuance of a writ of certiorarified mandamus to call for the
records of the fourth respondent made in his proceedings C.No.B/4853/2003/O.O.No. 62/2003
dated 22.11.2003 and his consequential order made in B/4853/2003/O/O 10/2004 dated 21.1.2004,
quash the same and consequently direct the respondents to pay all retirement benefits to the
petitioner. 3. Prayer in W.P.No.6713 of 2007 is for the issuance of a writ of certiorarified
mandamus to call for the records of the fourth respondent made in his proceedings
C.No.B/469/2007/O.O.No.5/2007 dated 6.2.2007, quash the same and consequently forbear the
respondents from reducing the scale of pay of the petitioner which he was receiving prior to the
impugned order and pay the consequential pay revision. 4.Since the common issues had arisen for
consideration in these writ petitions, they are disposed of by this common order. 5. The petitioner
in W.P.No.28785/2004 joined in the services of the 4th Respondent in the year 1976 as Time
Keeper Police in temporary basis and has an unblemishless record. The petitioner in W.P.No.6713
of 2007 joined in the services of the 4th Respondent on 4.7.1980 as Time Keeper in temporary basis
and has an unblemishless record. 6. The post held by the petitioners herein is a non-promotional
post at the time of their joining. There is no specific rules governing the service conditions of the
employees for the post of Technical Assistant, Foreman, Time keeper etc., in the Armed Forces at
the relevant point of time. The Government of Tamil Nadu issued G.O.Ms.No.1111 dated 4.5.1985
wherein the adhoc rules were framed and the same was applicable to the post of time keeper as per
the notification issued by the Government of Tamil Nadu.The Government of Tamil Nadu issued

G.O.Ms.No.731 dated 29.8.1994, after the recommendation of V Pay Commission wherein the pay scales of certain posts including the post of Time keeper in the Police Transport Workshop were revised. The Government had examined the question of rationalizing the pay scales of the posts in certain departments including the Police Transport Workshop in consultation with the Works Manager, Police Transport Workshop etc., and accordingly, the Works Manager Police Transport Workshop has submitted the revision of cadre structure as in Motor Vehicles Department and State Health Transport Department with revision in the pay scales of certain posts and accordingly revised the scales of pay. 7. The post held by the petitioners was redesignated as Fitter Grade-I and revised scale of pay was fixed at Rs.1,100-1,660/- vide 4th Respondent's workshop order dated 15.11.1994. However, the petitioners were always been classified only as time keeper and not as Fitter Grade I and in fact no promotion opportunities were given to the petitioners nor any of the other time keepers working in the department. On the other hand promotions were given only to the Industrial Category persons. The petitioners have been serving for more than 25 years without any promotion as there was no possibility of promotion. Hence, the concession given by the 6th pay commission to those of the posts which did not have promotion opportunities was also extended to the petitioner and others similarly placed. 8. In fact the Secretary to Government in G.O.Ms.No.731 had also noted that the Works Manager, Police Transport Workshop to send amendment to the special rules governing the regrouped categories. The Automobile Engineer has also suggested such recommendations by his letters dated 4.12.2001, 07/7/2002, 12.8.2002 and 27.6.2003 and also seeking clarifications whether the time scale fixed in so far as the petitioners are concerned is correct or not. 9. The 4th Respondent Works Manager, Police Transport Workshops, Chennai was directed to send the amendment to special rules governing the regrouped categories at the earliest so as to ensure the early issue of orders. The 4th Respondent further requested the 2nd Respondent to send the proposal to the Secretary to Government, Finance Department. The 4th Respondent forwarded a letter dated 4.12.2001 to the 2nd Respondent requesting to exempt the redesignation of post of Fitter Grade-I as there is no ITI Qualification and cannot discharge the mechanical duties, they may be exempted from G.O.Ms.No.731. The 4th Respondent by his letter dated 12.8.2002 recommended to the 2nd Respondent stating that the non-promotional categories like Time Keeper etc., have been merged with promotional categories that is Mechanic Grade-II and Fitter Grade-I. The 4th Respondent has also issued a letter dated 30.7.2002 to the 2nd Respondent through proper channel that as far as the technical staff of the Police Transport Workshop Cum Training School, Avadi is concerned there are two groups of categories, one category is non-industrial category and the other category is industrial category and the non-industrial category is merged with industrial category. It is further stated in the letter dated 30.7.2002 that the non-industrial categories need not be merged with industrial categories as ordered in G.O.Ms.No.731 Finance (Pay Commission) Department dated 29.8.94 and the non-industrial employees may be allowed to function in their original designated posts by retaining the categories with the revised pay scale. Hence the 4th Respondent requested necessary amendment to the G.O.Ms.No.731 Finance (Pay Commission) Department dated 29.8.94 with the Government. 10. On 27.6.2003 again the 4th Respondent requested whether the Higher Selection Grade Scale (i.e.) Scale indicated in Schedule II of the Pay Commission G.O. which was allowed to the petitioners is correct or their selection Grade scale should be restricted to I level promotion (i.e) Fitter special ordinary Grade scale (i.e) Rs.4,300-100-6000/-. 11. The petitioner in W.P.No.28785 of 2004 submitted an application dated 25.8.2003 for the sanction of 90% final payment from his G.P.F. savings as he is due to retire on 31.8.2004 and the same was also sanctioned to a sum of Rs.94,000/-. The petitioner sent a representation dated 19.12.2003 to the finance secretary requesting to extend pay protection. The petitioner in

W.P.No.28785 was issued with the impugned proceedings stating that the special grade pay granted to him as per the Pay Commission G.O. has not been restricted to first level promotion scale and he has been allowed to draw higher pay in the selection grade scale as per Schedule-II of Pay Commission G.O. to which he is not entitled and scale of pay of application is modified and is ordered to recover the amount on 13.1.2004 and the O.D. pay and allowance paid to him from 1.9.94 which works out to Rs.1,42,187/- should be recovered from him and the same was ordered to be recovered from his DCRG. The petitioner's entitlement to DCRG works out to Rs.1,23,462/- which was ordered to be recovered in full and the balance amount to be recovered from his Terminal Leave Salary (TLS) at the time of retirement. Aggrieved by the order of the 4th Respondent dated 22.11.2003 and his consequential order dated 13.1.2004, he approached the Tamil Nadu Administrative Tribunal in O.A.No.1249 of 2004 praying to quash the same and also for a direction to the Respondents to pay all the monetary benefits on his retirement without any delay. During the pendency of the Original Application before the Tribunal, the petitioner attained the age of superannuation on 31.8.2004. The petitioner was not paid his retirement benefits particularly the Gratuity payable to him and commutation of pension. Hence, the petitioner approached this Court by filing this writ petition. 12. The petitioner in W.P.No.6713 of 2007 sent a representation dated 23.6.2004 to the Finance Secretary requesting to extend pay protection. The petitioner in W.P.No.6713 of 2007 was issued with the impugned proceedings stating that the special grade pay granted to him as per the Pay Commission G.O. has not been restricted to first level promotion scale and he has been allowed to draw higher pay in the selection grade scale as per Schedule-II of Pay Commission G.O. to which he is not entitled and scale of pay of application is modified and is ordered to recover the amount from February 2007 and the O.D. pay and allowance paid to him from 1.9.94 to 31.1.2007 works out to Rs.1,86,597/- should be recovered from him in 42 installments from his monthly salary at the rate of Rs.4,500/- P.M.. Aggrieved by the impugned proceedings, he approached this Court by filing this writ petition. 13. The learned senior counsel appearing for the petitioners in his submission has strenuously contended that the recommendation made by the 4th Respondent to the Director General of Police pointing out many other things with regard to the anomaly and requested the 2nd Respondent not to merge non-industrial categories with industrial categories as ordered in G.O.Ms.No.731 Finance Department dated 29.8.1984 and further requested the authorities concerned that the non-industrial employees may be allowed to function in their original designated posts by retaining the categories with the revised pay scale. In spite of such recommendation made by the 4th Respondent the first Respondent has not chosen to consider it and rejected the request and ordered the 4th Respondent to effect recovery and the same is vitiated in law. He would further contend that challenge has also been made to the legality and vires of the above said Government Order. 14. The learned senior counsel appearing for the petitioners at the outset submits that out of 5 writ petitions already 3 writ petitions have been disposed of and the decision taken by this Court in those matters is applicable to the present case also. A copy of one such order produced before this Court was made in W.P.Nos.27849 and 27850 of 2004 dated 9.11.2010 in the case of O.Mani and M.Adimulam vs. Government of Tamil Nadu wherein this Court after hearing the counsel on either side disposed of the writ petitions with the following orders:- "23. The fact remains that as per G.O.Ms.No.731 Finance (PC) Department, dated 29.8.1994, the pay scale of the respective writ petitioners has been revised in the scale of pay of Fitter Grade-I. Admittedly, the petitioners joined the services of the fourth respondent as Time Keepers, and except one petitioner, the other two petitioners had retired, and till their retirement, they performed their duties only as Time Keepers. Since the post of Time Keeper was in the non-promotional category, the adhoc rules were framed in G.O.Ms.No.1111 Home (Pol.XIII)

Department, dated 4.5.1985. After the implementation of G.O.Ms.No.731 Finance (PC) Department, dated 29.8.1994, the post of Time Keeper was redesignated as Fitter Grade-I, and revised pay structure in the scale of pay of Rs.1100-1660 with notional effect from 1.6.1988, was introduced with monetary effect from 1.9.1994. Therefore, from the said date onwards, the post of Time Keeper is no longer in existence. 24. No doubt, the fourth respondent, in view of practical difficulties, has submitted his recommendation to the Director General of Police stating that the non-industrial categories need not be merged with industrial categories as per G.O.Ms.No.731 dated 29.8.1994, and necessary amendment to the above said G.O. may be obtained from the Government. Based on the said proposal sent by the fourth respondent, the Director General of Police has also made a request to the Home Department. However, the Home Department vide letter dated 20.5.2004, has rejected the said recommendation on the ground that the proviso in the above said G.O. is applicable to all categories of employees, and hence there is no justification to allow the Selection Grade/Special Grade scales as per Schedule II of G.O.Ms.No.162 Finance dated 13.4.1998, and the rationalisation of the technical categories have been done taking into consideration that the qualification would be raised to ITI for future recruits. Citing the said reason, the Home Department has stated that it is not possible to separate the categories as proposed by the Director General of Police by placing certain categories as they were earlier (prior to rationalisation) on a lower scale of pay after a lapse of over 9 years. The Home Department citing the said reason, has also rejected the proposal sent by the Director General of Police for amending G.O.Ms.No.731 dated 29.8.1994. 25. It is a settled position of law that the fixation of scale of pay is purely an executive function, and the Court cannot act as an executive authority and fix the pay scales. The fixation of scales of pay as well as the other allowances is technical in nature, and the Court is not having any expertise to do the said exercise. 26. Therefore, this Court is not in a position to grant relief to the respective writ petitioners insofar as re-fixation of scale of pay is concerned. The Government in its letter dated 20.5.2004, has specifically considered the recommendation made to the Director General of Police and rejected the same stating that the amendment of G.O.Ms.No.731 dated 29.8.1994, allowing the Selection/ Special Grade Scales of pay inducted in Schedule II of Pay Commission G.O.Ms.No.162 Finance dated 13.4.1998, is not feasible of compliance. Therefore, the challenge made by the respective writ petitioners with regard to re-fixation of scale of pay cannot be considered. However, the respective writ petitioners are entitled to submit their representation to the Government, and on receipt of such a representation from them, the Government can refer the same to the Pay Anomaly Committee for taking a decision. 27. Insofar as the order of recovery on account of the excess payment is concerned, it is a trite law that the Courts refuse recovery of excess payment when it was (a) not made on account of misrepresentation or fraud or, (b) by applying a wrong principle, the interpretation of which is subsequently found to be erroneous. The said proposition has been laid down by the Apex Court in the judgment reported in (2006) 11 SCC 709 (B.J.AKKARA (RETD.) V. GOVERNMENT OF INDIA), and it has been followed in number of cases. A perusal of the counter affidavits would disclose that the respective writ petitioners have not made any misrepresentation or exercised fraud and got the amount. In this context, it is also useful to refer to the recommendations made by the fourth respondent to the Director General of Police dated 4.12.2001 and 30.7.2002, wherein it has been recommended that the non-industrial categories need not be merged with industrial categories. The said request was rejected by the Government vide letter dated 20.5.2004. It is not the case of the first respondent that the excess payment has been made to the respective writ petitioners on account of their misrepresentation or commission of fraud. 28. This Court, taking into consideration the said factual situation and also keeping in mind the ratio laid down in the above said decision, is

of the considered opinion that the portion of the impugned order which orders the recovery of the excess amount paid to the respective writ petitioners alone cannot be sustained. 29. In the result, these writ petitions are allowed, and the respective impugned orders ordering the recovery of the excess amount paid to the respective writ petitioners, are quashed. In the circumstances, there will be no order as to the costs. Consequently, connected MP is also closed. 30. The findings/observation given herein, are only for the purpose of disposal of these writ petitions, and the respective writ petitioners who are also parties to W.P.No.36718/2007, are at liberty to put forth their contentions with regard to the challenge made to G.O.Ms.No.731 Finance (PC) Department, dated 29.8.1994, in the above said writ petition." 15. The facts involved in these writ petitions are similar to the ones in the above writ petitions. Therefore, following the same, these writ petitions are also disposed of on the above terms. No costs. Consequently, M.P.Nos.1 and 2 of 2007 are closed. gr.

To:

- 1.The Secretary to Government Fort St. George Chennai 600 009.
- 2.The Director General of Police Mylapore Chennai 600 004.
- 3.The Inspector General of Police Armed Force Chennai 600 010.
- 4.The Automobile Engineer Incharge Works Manager Police Transport Workshop-cum-Training School Avadi Chennai 600 054