

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 25.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.9633 of 2012

C.Periasamy

... Petitioner

versus

1.The Director,
Rural Development and Panchayat Raj,
Panagal Building, Chennai 15.

2.The District Collector,
Villupuram District.

3.The Block Development Officer,
Kallakurichi Panchayat Union,
Kallakurichi Taluk,
Villupuram District 606 201 ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records in Na.Ka.No.A1/3455/ 2007 dated 7.7.2010 on the file of the 3rd respondent and quash the same and direct the respondents to sanction retirement benefits and pension to the petitioner in the special grade pay for the post of junior assistant.

For petitioner Mr.S.N.Ravichandran

For respondents Mr.M.S.Ramesh, Additional Government Pleader

Mr.P.S.Sivashanmugasundaram, for R-3

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O R D E R

This Writ Petition is directed against the order dated 7 July 2010 whereby and whereunder, long after the retirement of the petitioner, the third respondent directed recovery of a sum of Rs.90,847/- from his pension, primarily on the ground that he failed to pass the departmental test and as such, he was not eligible for the pay and allowances, as paid to him.

2. The petitioner was appointed as Office Assistant in 1972. The petitioner was ultimately promoted as Junior Assistant. He was given Selection Grade and Special Grade pay in the post of Junior Assistant and on attaining the age of superannuation, the petitioner retired on 31 July 2005. Subsequently, taking note of the audit objection, the

third respondent passed the impugned order directing recovery of a sum of Rs.90,847/-.

3. The third respondent filed a counter affidavit contending that the petitioner claimed selection grade salary in the post of Junior Assistant without clearing the departmental test. Since he was paid selection grade and special pay, notwithstanding his ineligibility, the impugned order was passed to recover the excess amount. Accordingly, the third respondent justified the impugned order.

4. Heard the learned counsel for the parties.

5. The petitioner was promoted to the post of Junior Assistant. The petitioner was expected to pass departmental test. Though the petitioner passed tests in Panchayat Act and Grama Swarajyam subjects, he failed in other papers. The case of the petitioner was recommended by the District Collector for exemption. Thereafter, the petitioner was given selection grade and special grade. He was also given pay applicable to selection grade and special grade in the post of Junior Assistant. The petitioner retired from service on 31 July 2005. It was only thereafter, the third respondent initiated proceedings to recover the alleged excess amount on the ground that audit wing has pointed out that he failed to clear the departmental examination and as such, he was not eligible for selection grade and special grade pay.

6. The petitioner was not responsible for the payment of pay equivalent to Selection Grade and Special Grade. The third respondent knowing fully well that the petitioner has not cleared the departmental test, granted him selection grade and special grade pay. In fact, case of the petitioner was recommended to the Government by the second respondent for exemption. The petitioner worked in the post of Junior Assistant for about 20 years without passing departmental test. This fact was known to the third respondent. Therefore, only with the full knowledge of his failure to pass the test, the petitioner was given selection grade and special grade and the related pay. Such being the factual position, the third respondent was not correct in passing the impugned order after retirement, directing recovery solely on account of the objection raised by the audit wing. I am therefore of the view that the petitioner is entitled to succeed.

7. In the result, the impugned order is set aside and the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director,
Rural Development and Panchayat Raj,
Panagal Building, Chennai 15.

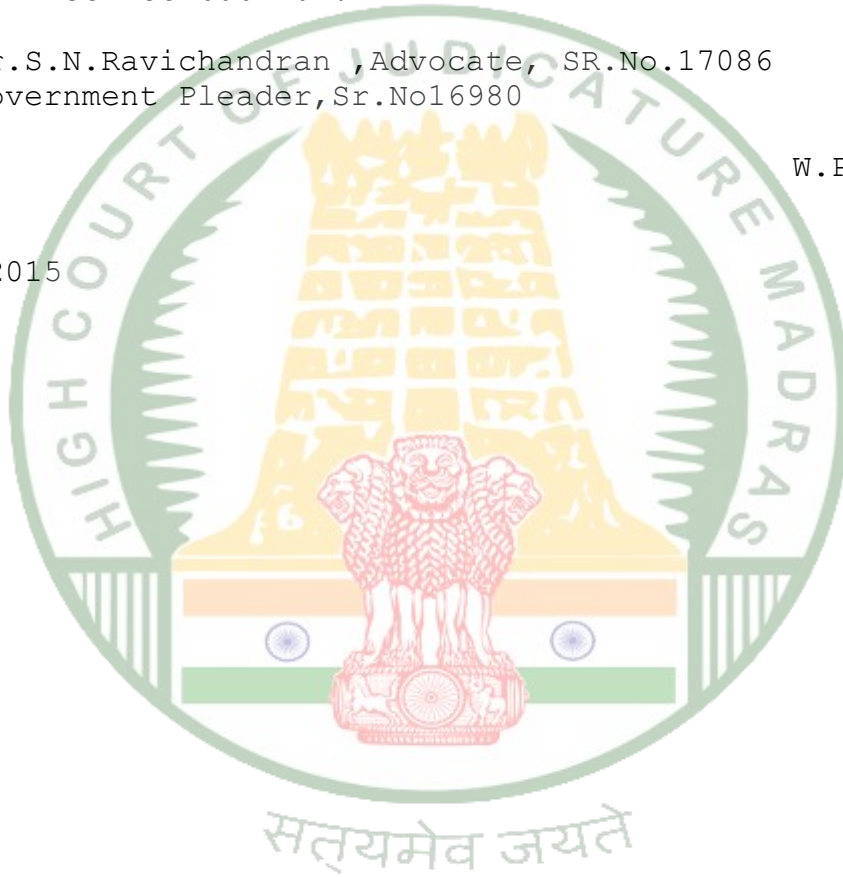
2.The District Collector,
Villupuram District.

3.The Block Development Officer,
Kallakurichi Panchayat Union,
Kallakurichi Taluk,
Villupuram District 606 201.

1 cc to Mr.S.N.Ravichandran ,Advocate, SR.No.17086
1 cc to Government Pleader,Sr.No16980

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