

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.12614 of 2007

(O.A.No.1830 of 2003)

1. M.Loganathan (died)
2. Savithri
3. Pramila
4. Saravanan

(Petitioners 2 to 4 substituted in the place of deceased petitioner as per order dated 16.10.2014 in M.P.No.1 of 2014 in W.P.No.12614 of 2007)

.. Petitioners

-vs-

1. The Superintending Engineer
Public Works Department
Building (C & M) Circle
Salem-7
Salem District
2. The Executive Engineer
Public Works Department
Building (C & M) Division
Dharmapuri-636 705
Dharmapuri District
3. The Assistant Executive Engineer
Public Works Department
Building Construction Sub Division
Dharmapuri 636 701
Dharmapuri District

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records relating to the impugned order in proceedings No.F3/2003 dated 21.3.2003 of the third respondent and quash the same.

For Petitioners :: Mr.L.Chandrakumar for
Mr.C.Prabakaran

For Respondents :: Mrs.M.E.Rani Selvam
Additional Government Pleader

ORDER

The first petitioner-Mr.M.Loganathan, challenging the impugned order of recovery dated 21.3.2003, approached the Tamil Nadu Administrative Tribunal by filing O.A.No.1830 of 2003, taking a ground that when he was given the benefit of selection grade scale on completion of ten years of service in the post of Head Mazdoor that has been re-designated as Work Inspector Grade III, by G.O.Ms.No.74, Public Works Department dated 12.1.84, since he had put in ten years of service on 1.5.86 and further rendered ten more years of service from 1986 to 1996 as Work Inspector Grade II after selection grade and as Work Inspector, the impugned order dated 21.3.2003 ought not to have been issued without there being any notice whatsoever. On abolition of the Tribunal, the matter stood transferred as a writ petition and during the pendency of the matter, since the first petitioner died, his legal representatives, namely, petitioners 2 to 4, were brought on record as per the order of this Court dated 16.10.2014.

2. Learned counsel for the petitioners submitted that when the first petitioner was not given any opportunity to show cause against the re-fixation of his pay and recovery of the alleged excess amount, the order of recovery should be held as illegal, as it is in violation of all the principles of natural justice. Therefore, the same is liable to be set aside. Adding further, it has been stated that as per G.O.Ms.No.74, Public Works Department dated 12.1.84, the post of Head Mazdoor has been re-designated as Work Inspector Grade III. It is the admitted case of the first petitioner that from the date the post of Head Mazdoor was provincialised from 1.5.76 till 1.5.86, he has completed ten years of service. Again from 1.5.86 till 1.5.96, he has also completed another ten years of service. Therefore, on the basis of two Government Orders, namely, G.O.Ms.No.740, Finance (Pay Cell) Department dated 14.8.86 and G.O.Ms.No.250, Finance Department dated 21.3.94, his ordinary grade scale of pay of Rs.610-1075 has been revised as selection grade scale of pay of Rs.705-1230. When the petitioner was given selection grade scale on the basis of the proceedings No.F3/2002/263 dated 21.3.2002 holding that the pay structure of Work Inspector has been recommended to be revised with effect from 1.10.84, the first petitioner, according to the respondents, became eligible to draw his arrears of pay due to this re-fixation with effect from 1.4.86 onwards. After passing orders, the respondents, without giving any advance notice whatsoever to the first petitioner, cannot pass the impugned order. Concluding his arguments, he has stated that when the first petitioner, who had put in 36 years of service, was allowed to retire on 30.6.2008, subsequently he died in an accident on 5.5.2010. Although the first petitioner obtained an order of stay from the Tribunal, it became inoperative, since the respondents commenced the recovery proceedings by then.

3. Opposing the above prayer, a detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader appearing for the respondents, repeating the stand taken in the counter affidavit, submitted that the contentions made by the learned counsel for the petitioners to quash the impugned order on the ground that no notice was issued should be rejected, since the proceedings dated 21.3.2002 issued by the respondents revising the pay structure of the Work Inspector clearly mentioned that if any difference in the fixation was found at a later date, the same would be recovered from his pay and the first petitioner was also aware of it. That apart, the first petitioner, who was appointed as Head Mazdoor on 1.5.71, on completion of ten years of service, was moved to selection grade as Work Inspector Grade II in the scale of pay of Rs.610-1075, as per G.O.Ms.No.250, Finance dated 21.3.94, after regularising his services with effect from 1.5.76. However, in the said Government Order, the scales of pay applicable to Work Inspector Grades I to III are clearly indicated and after completion of ten years and twenty years service, the scales of pay applicable to the category are also furnished. But there was no provision to club Grade III Work Inspector scale into Grade II Work Inspector scale as specified by the petitioners. Since the first petitioner had completed 20 years of service as Work Inspector Grade III with the scale of pay of Rs.1200-2040, he is not entitled to the scale of pay of Rs.1400-50-2300-60-2600. In view of that, although his scale of pay was re-fixed in the proceedings dated 21.3.2002, the first petitioner was duly informed that the pay fixation made then was found to be incorrect, the excess pay drawn would be recovered without giving prior notice. Therefore, it is not open to the petitioners to say that the impugned order was passed violating all the principles of natural justice.

4. This Court finds full merits in the submissions made by the learned Additional Government Pleader for the respondents. It is not in dispute that the first petitioner was regularised in the post of Head Mazdoor on 1.5.76. However, by G.O.Ms.No.74, Public Works Department dated 12.1.84, the post of Head Mazdoor has been re-designated as Work Inspector Grade III. Therefore, the revised scales of pay which were applicable to Grade I and Grade II Work Inspectors have been wrongly given to the first petitioner. That has been rightly found out and sought to be recovered in the impugned order. However, as rightly contended by Mr.L.Chandrakumar, no notice has been given. But unfortunately, the first petitioner, after retiring from service on 30.6.2008, passed away on 5.5.2010. Therefore, if the matter is even remanded now, no purpose would be served. That apart, by the time the order of stay was granted by the Tribunal, the first petitioner did not take any steps to stop the recovery proceedings, as a result, the recovery stood completed. In view of the above,

this Court is not able to interfere with the impugned order. Accordingly, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

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Salem-7
Salem District
2. The Executive Engineer
Public Works Department
Building (C & M) Division
Dharmapuri-636 705
Dharmapuri District
3. The Assistant Executive Engineer
Public Works Department
Building Construction Sub Division
Dharmapuri 636 701
Dharmapuri District

+1 CC to Mr.C.Prabakaran, Advocate, SR.NO.1057

+1 CC to Government Pleader, SR.NO.1254

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GJ(CO)
DRL :21/02/2015