

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.162 of 2016

S. Jegannathan ...Appellant/Petitioner

Vs.

1 The Director of Local Fund Audit
Kuralagam
Chennai 600 108

2 The District Collector
Namakkal District, Namakkal

3 The Commissioner
Mohanur Panchayat Union
Namakkal

...Respondents/Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 09.11.2012 passed in W.P. No.44399 of 2006.

Petition Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in ref. Na.Ka.NO. 03509/05/2006 dated 30-05-2006 in so far as deduction of he salary paid as Rock blasting Supervisor and the order of the 2nd Respondent passed in Na.Ka.No. N3/31758/2006 dated 04.09.2006 and the order of the Ist respondent in Mu.Mu.No. 05/42969/06 dated 12.09.2006 and quash the same and consequently direct the respondents to pay the amount deducted in the impugned orders with 18% interest and to pay all other monetary benefits.

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For appellant

Mrs. S.T.P. Kuilmozhi

For respondents

Mr. P.S. Sivashanmugasundaram
Special Government Pleader

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, accepts notice for the respondents.

2 This writ appeal is focussed against the order dated 09 November 2012 rendered in W.P. No.44399 of 2006.

3 To avoid prolixity, the parties are referred to as per their rank in the instant appeal.

4.1 A vignette of the facts leading to the filing of the instant writ appeal is that the appellant was appointed as Rock Blasting Unit Supervisor in the third respondent Panchayat Union in time scale of pay in the year 1970. On reaching the age of superannuation on 31 August 2001, he was allowed to retire from service. However, by order dated 27 May 2006 passed by the second respondent, viz., the District Collector, Namakkal, he was regularised in the post of Assistant. On the same day, the third respondent, viz., the Commissioner, Mohanur Panchayat Union, ordered for recovery of excess pay of Rs.3,37,678/- from the pensionary benefits of the appellant. Accordingly, the first respondent, viz., the Director of Local Fund Audit, Chennai, vide letter dated 30 May 2006, determined the pensionary benefits payable to the appellant as Rs.1,25,232/-, after deducting Rs.3,37,678/- from the total entitlement of Rs.4,62,910/-. Subsequently, by memorandum dated 04 September 2006, the second respondent informed the third respondent to hand over the order of regularisation dated 27 May 2006 to the appellant. Thereafter, based on the appellant's request to re-fix the pensionary benefits correctly, the first respondent, vide order dated 12 September 2006, informed the appellant, justifying the determination of pensionary benefits. Assailing the said three orders, viz., orders dated 30 May 2006, 04 September 2006 and 12 September 2006, the appellant preferred the instant writ petition. In the said writ petition, the appellant further sought a direction to the respondents to pay him the amount deducted with interest @ 18% per annum and also to pay all other monetary benefits.

4.2 The learned Single Judge, finding that the appellant's pay was fixed erroneously and not due to any misrepresentation made by the appellant, referring to and relying on the judgment of the Supreme Court in Syed Abdul Qadir and Others vs. State of Bihar and Others¹, set aside the order dated 30 May 2006, insofar as recovery of the alleged excess payment made to the appellant

1 (2009) 3 SCC 475

and granted liberty to the respondents to re-fix the appellant's pay in the post of Assistant.

4.3 Feeling dissatisfied with the aforesaid order passed by the learned Single Judge, the appellant is before us.

5 The sole ground of the appellant's challenge is that in case of a similarly placed employee, no liberty was granted to the respondents to re-fix the pay in the post of Assistant and accordingly, his pay was also fixed in the scale of Rock Blasting Unit Supervisor. Thus, the learned Single Judge ought not to have granted liberty to the respondents to re-fix the appellant's pay in the post of Assistant.

6 According to the learned counsel for the appellant, once the appellant's pay has been fixed and the benefit of such fixation has been extended to a similarly placed employee, the learned Single Judge was in error in granting liberty to the respondents to re-fix the appellant's pay in the post of Assistant.

7 We are not in agreement with the contention of the learned counsel for the appellant. It is open to the employer to re-fix the pay if it is erroneously fixed on some other post. We are not observing anything on the merit as to whether fixation was erroneous or proper. However, since liberty is granted by the learned Single Judge to the respondents to re-fix pay, if so advised, in the event, the respondents take a decision to re-examine the issue, the appellant shall be entitled to an opportunity of hearing before passing an order on re-fixation.

The writ appeal stands disposed of with the aforesaid observation. Costs made easy.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

- 1 The Director of Local Fund Audit,
Kuralagam,
Chennai 600 108.
- 2 The District Collector,
Namakkal District, Namakkal.
- 3 The Commissioner,
Mohanur Panchayat Union,
Namakkal.

+1cc to M/S.S.T.P.Kuilmzhi, Advocate Sr.10300

W.A. No.162 of 2016

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srg 04/03/2016



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