IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.12.2016

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.29788 of 2013
and M.P.Nos.1 and 2 of 2013

P.Sathiyamoorthi .. Petitioner

Vs

1.The Director of Local Fund Audit,
Local Fund Audit Department,
Kuralagam, 4th Floor,
Chennai 600 108.
2.The Director of Municipal Administration,
Ezhilagam Building (Annex), Chepauk,
6th Floor, Chennai 600 005. .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent made in his Proceedings No.MPv(6)/4894/2013 dated 18.04.2013 and quash the same insofar as fixing of the pension of Rs.5,892/- is concerned and consequently, direct the 1st respondent to refix the pension of the petitioner at Rs.10,115/- as on the date of his retirement by taking into account the advance increment awarded to him in the year 1991 for passing the departmental test and pay all the consequential arrears expeditiously.

For Petitioner : Mr.Silambanan Sr.counsel
for M/s.Profexs Associates

For Respondents : Mrs.M.E.Raniselvam
Addl.Govt.Pleader

O R D E R

The first respondent had passed an order dated 18.04.2013 whereby, he had suo motu reduced the last drawn pay from Rs.20,230/- to Rs.19,640/- in the pension stating that the increment given for passing the Departmental test has to be reduced with retrospective effect, since the petitioner had relinquished the right to promotion and thereby fixed the petitioner's pension at 50% of Rs.19,640/-

instead of Rs.20,230/-. Aggrieved against the said order dated 18.04.2013, the present writ petition has been filed.

2. The case of the petitioner is that he had joined as Junior Assistant in the Municipal Office, Karur on 02.01.1978. Since the petitioner had passed the Departmental test, he was given an increment of Rs.25/- with effect from 08.11.1991. According to the petitioner, since there was no promotional opportunity for him in the said post, he had relinquished the right of promotion for three years through his letter dated 10.08.1998. Subsequently, the petitioner was given selection grade and special grade in the year 1998 and thereafter, super grade in the year 2008 on completion of ten years, 20 years and 30 years respectively in the same post. The petitioner's request for relinquishing the future right of promotion was accepted by the Director of Municipal Administration on 15.10.2001.

3. On 31.01.2013, the petitioner had attained the age of superannuation. The Commissioner, Municipal Office, sent a revised proposal on 10.02.2013 to the first respondent wherein, the petitioner's last drawn pay was stated as Rs.20,230/- and the petitioner was entitled to get 50% of the same as pension. By an order dated 18.04.2013, the first respondent had suo motu reduced last drawn pay of the petitioner from Rs.20,230/- to Rs.19,640/- on the ground that the increment given on passing the account test has to be reduced with retrospective effect, since the petitioner had relinquished his right to promotion. Aggrieved against the said letter, the petitioner had addressed the first respondent on 14.05.2013 stating that the pension so fixed was erroneous as per the revised proposal of the Commissioner. On 02.08.2013, the Director of Local Fund Audit relying on the Government letter dated 18.12.1987 had informed the petitioner that the employees who have been sanctioned advance increment and who have relinquished the right of promotion are not eligible for advance increment.

4. According to the learned Senior counsel for the petitioner, the increment given for passing the departmental test cannot be at any stretch of imagination be withdrawn for the reason relinquishing his promotion which is opposed to public policy. The learned Senior counsel further submitted that the respondents are adopting discriminatory method by applying different yardstick in identical cases in the same Karur Municipality. According to him, the respondent had granted the increment and also paid pension and the last drawn salary to one Mr.R.Selvaraj, Steno-typist, who also relinquished his promotion and retired in the same post in Karur Municipality without any deduction on his retirement. Hence, the conduct of the respondent in adopting discriminatory method on the petitioner is illegal and the same is liable to be quashed.

5. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that all the Government orders and the relevant clarification issued by the Government from time to time are scrupulously followed by the first respondent while sanctioning pension and pensionary benefits without any discrimination. In view of the Government letter dated 18.12.1997, the petitioner is not eligible for advance increment, since he had relinquished his promotion. The learned Additional Government Pleader on written instructions from the Director of Local fund Audit further submits that the Service Register of the Municipality Employees are maintained by the respective Municipalities and in view of the same, the first respondent is unable to ascertain, the cases of similarly placed persons who have been sanctioned pension by considering the advance increment. With regard to the case of of Mr.R.Selvaraj, the first respondent has stated that the benefit of sanctioning the pension by taking into account of advance increment was inadvertently done by the first respondent.

6. Heard both sides and perused the materials available on record.

7. I am unable to accept the contention of the learned Additional Government Pleader. Though the retirement papers of the petitioner has been sent about nine months before the superannuation, the Local Fund Audit Office had not considered this aspect at the earliest point of time. Moreover, the first respondent, who had verified the petitioner's service records for more than 13 years, had not taken into account this aspect.

8. In my view, the increment granted to the petitioner is only for passing the Departmental test. When the petitioner had relinquished his promotion due to family circumstances, the same was accepted by the respondents without informing him about the Government letter dated 18.12.1987. Furthermore, the respondents atleast could have informed the petitioner, when his retirement papers were sent about nine months before the superannuation about his ineligibility of advance increment on the basis of the Government letter. Above all, when the respondents had chosen to extend the benefit for advance increment to similarly placed persons, the petitioner would also be entitled on the same basis. The reasoning of the first respondent that they had inadvertently paid such benefit to identically placed employees and that they are unable to ascertain the Service Register of the Municipality Employees, since such registers are maintained by the respective Municipalities, cannot be accepted and such plea of inadvertence can only be construed as discrimination.

9. By admitting their inability to ascertain the Service Register

maintained by the Municipality Employees, the first respondent had indicated that there could be several other employees, who have been extended the benefit for the purpose of fixing the pension. The case of the said R.Selvaraj, as pointed out by the petitioner who had also passed Departmental test and also relinquished the right of promotion, who has been granted the pension by taking into account his advance increment, is one such case. The action of the first respondent extending the benefit to R.Selvaraj and denying the same to the petitioner, is clear case of discrimination. The respondents have also not ruled out the possibility of similarly placed other pensioners, who have been granted with advance increment.

10. In view of the same, the reasoning of the respondents that the increment given to the petitioner for passing the account test has to be reduced with retrospective effect on the reasoning that the petitioner had relinquished his right of promotion, cannot be accepted.

11. Under such circumstances, the impugned order dated 18.04.2013, is liable to be quashed and is accordingly quashed. Consequently, the first respondent is directed to revise the pension of the petitioner at Rs.10,115/- instead of Rs.9,820/- with effect from the date of his retirement by taking into account, the advance increment awarded to him in the year 1991 for passing the Departmental test and pay the entire arrears, within a period of six weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition stands allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

To

1.The Director of Local Fund Audit,
Local Fund Audit Department,
Kuralagam, 4th Floor,
Chennai 600 108.

2.The Director of Municipal Administration,
Ezhilagam Building (Annex), Chepauk,
6th Floor, Chennai 600 005.

W.P.No.29788 of 2013
and M.P.Nos.1 and 2 of 2013

SAI(CO)PMK.2.2.2017