

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.No.34150 of 2016
and
W.M.P.No.29475 of 2016

P.Chandrasekaran

... Petitioner

vs.

1. The Government of Tamil Nadu
rep. by its Secretary,
Health Department,
Fort St.George, Chennai-600 009.
2. The Accountant General (A & E),
Tamil Nadu Circle,
361, Annasalai, Chennai-18.
3. The Deputy Director of Health Services,
Namakkal District,
District Collector's Office,
Thiruchengode Road,
Namakkal.
4. The Block Medical Officer,
Government Primary Health Centre,
Palapatti, Namakkal District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned orders, namely Na.Ka.No.7717/A2/1998, dated 12.02.2014 issued by the 3rd respondent and letter Moo.Mu.No.523/A1/2003, dated 02.11.2004 issued by the 4th respondent and to quash the same and consequently, to direct the respondents to return back to the petitioner the amount of Rs.37,913/- remitted by the petitioner and to refix the pay scale of the petitioner as ordered by the 3rd respondent in his proceedings R.No.4192/A2/2000, dated 09.01.2001 and accordingly, to refix the pay and pension for the petitioner and pay the arrears of pay and pensionary and other retiral benefits to the petitioner with a time frame.

For Petitioners : Mr.N.Subramaniyan

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader
(For R1, 3 & 4)

Mr.V.Vijay Shankar (For R2)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned orders, namely Na.Ka.No.7717/A2/1998, dated 12.02.2014 issued by the 3rd respondent and letter Moo.Mu.No.523/A1/2003, dated 02.11.2004 issued by the 4th respondent and to quash the same and consequently, to direct the respondents to return back to the petitioner the amount of Rs.37,913/- remitted by the petitioner and to refix the pay scale of the petitioner, as ordered by the 3rd respondent in his proceedings R.No.4192/A2/2000, dated 09.01.2001 and accordingly, to refix the pay and pension for the petitioner and pay the arrears of pay and pensionary and other retiral benefits to the petitioner within a time frame.

2.The brief facts of the case of the petitioner are as follows:-

2-1.The petitioner was appointed as Health Assistant in Panchayat Union on 13.10.1971. He was absorbed in the Public Health Services of the Government on 18.10.1982 and the said order of the Government was opposed by the erstwhile Health Department Staff and finally after the decision of the Court, the petitioner and others were considered as Government Staff as on 04.11.1988. Thereafter, the petitioner was promoted as Block Health Supervisor in the year 2004 and he retired from service on 31.10.2005 without any blemish.

2-2.As per the proceedings of the 3rd respondent, dated 24.05.1996, the petitioner's basic pay was fixed as Rs.1,440/- based on the Tamilnadu Revised Scale of Pay Rules 1989, taking his option date as deemed one on 01.06.1988 instead of taking his option date as 04.11.1988. According to the petitioner, had the option date been taken as 04.11.1988, the date of which the erstwhile Health Assistant became Government staff, the petitioner's basic pay ought to have been fixed as Rs.1,700/- as on 04.11.1988 in the pay scale of Rs.1600-50-2300-60-2660 as done for his colleague Mr.P.Rangasamy. Similarly, the petitioner's basic pay was fixed as Rs.1,880/- in the special Grade Sale of Pay of Rs.1820-60-2300-75-3200. Further, the petitioner's juniors namely V.Kalyanasundaram, R.Ramados, and

S.Pattulingam, R.Gopal etc., who joined the service after the joining of the petitioner, are also getting the basic pay of Rs.1,880/- in the pay scale of Rs.1820-60-2300-75-3200/-. This lapse has been noticed by the petitioner only during the year 2001 and on his representation to the 3rd respondent, his basic pay was rightly fixed as Rs.1700/- as on 04.11.1988 by the 3rd respondent vide his proceedings dated 09.01.2001 and he has been paid with arrears therefor.

2-3. Thereafter, the 2nd respondent has raised objections that the petitioner has been paid with excess pay to the tune of Rs.22,050/- till 30.06.2003 and based on the said audit objections, the 4th respondent issued proceedings dated 02.11.2004 directing the petitioner to remit the alleged excess amount of Rs.37,193/- forthwith. Since the petitioner was threatened orally by the respondents 3 & 4 that in case of non-remittance of the said amount, the petitioner might not be allowed to retire on 31.10.2005, the petitioner remitted the said amount and thereafter, he was allowed to retire from the service.

2-4. Thereafter, the petitioner had filed a writ petition in W.P.No.26561 of 2013, seeking a direction to the respondents to consider the representation of the petitioner dated 08.08.2013 wherein the petitioner sought to get back the payment he remitted under the undue influence of the respondents. In the said writ petition, this Court by order dated 25.09.2013 directed the respondents to consider the said representation of the petitioner and to pass orders. Thereafter, the 3rd respondent vide his letter dated 12.02.2014 without any application of mind rejected the request of the petitioner. In his rejection letter, the 3rd respondent has stated that his basic pay as on 01.10.1991 was Rs.1,750/- in the time scale of pay of Rs.1600-50-2300-60-2660; the petitioner's special grade basic pay as on 13.10.1971 then became Rs.1,800/- by adding a notional increment, but, the special grade pay is Rs.1820-60-2300-75-3200 and hence, his pay ought to have been fixed as the minimum as Rs.1,820/- in the aforesaid Special Grade Pay Scale.

2-5. It is further stated by the petitioner that the objection was raised by the 2nd respondent without noticing the fact that there were already entries in the Service Register of the petitioner depicting that a proceeding was issued by the 2nd respondent fixing the special grade pay of the petitioner as Rs.1,880/- as on 13.10.1991 in the special grade pay scale of Rs.1,820-60-2300-75-3200, which resulted into the remittance of Rs.37,193/- and further, reduced his retiral benefits including reduction in pension.

2-6. While the proceedings of the 3rd respondent dated 09.01.2001 is still in force, the 4th respondent issued direction to the petitioner to remit an amount of Rs.37,913/- on the eve of his retirement alleged to be an excess salary

received and forced him to comply with the same. Before passing the impugned order, no show cause notice was issued to the petitioner and no explanation was called for from the petitioner. According to the petitioner, the payment of Rs.37,913/- into the Treasury by the petitioner and consequential reduction of pay scale of the petitioner without giving any opportunity to the petitioner is illegal. Hence, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel for the petitioner would contend that the petitioner's juniors namely V.Kalyanasundaram, R.Ramadoss, S.Pattulingam, R.Gopal etc., who joined the service after the joining of the petitioner, were getting the basic pay of Rs.1,880/- in the pay scale of Rs.1820-60-2300-75-3200/-. This lapse has been noticed by the petitioner only during the year 2001 and on his representation to the 3rd respondent, his basic pay was rightly refixed as Rs.1700/- as on 04.11.1988 by the 3rd respondent vide his proceedings dated 09.01.2001 and he has been paid with arrears therefor. While so, the 4th respondent by proceedings dated 02.11.2004 directed the petitioner to remit the amount of Rs. Rs.37,913/- alleging that the said amount has been paid in excess to the petitioner. Thus, the learned counsel for the petitioner sought for suitable direction to the respondents.

4. But, the learned Special Government Pleader as well as the learned counsel for the 2nd respondent, by filing counter, would contend that even in the impugned order dated 12.02.2014 issued by the 3rd respondent, it has been stated that if the petitioner produces the documents/records to show that his juniors are getting more pay than him, his request would be considered. Therefore, no question of quashing the impugned orders would arise.

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

6. Considering the facts and circumstances of the case and from perusal of the materials available on record, I find that the petitioner's special grade pay had been revised/refixed, but without considering the same, the impugned orders have been passed. Even in the impugned rejection order dated 12.02.2014 passed by the 3rd respondent, it has been clearly mentioned that if the petitioner produces the documents/records to show that his juniors are getting more pay than him, his request would be considered. Under such circumstances, I am of the opinion that the impugned order 12.02.2014 passed by the 4th respondent rejecting the request of the petitioner is liable to be quashed. Accordingly, the same is quashed. The matter is remanded back to the respondents to consider the claim of the petitioner, in

the light of the proceedings of the 3rd respondent dated 09.01.2001, and to pass appropriate orders.

With the above terms, the writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Secretary,
Government of Tamil Nadu
Health Department,
Fort St.George, Chennai-600 009.
2. The Accountant General (A & E),
Tamil Nadu Circle,
361, Annasalai, Chennai-18.
3. The Deputy Director of Health Services,
Namakkal District,
District Collector's Office,
Thiruchengode Road,
Namakkal.
4. The Block Medical Officer,
Government Primary Health Centre,
Palapatti, Namakkal District.

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.65797
+1cc to the Government Pleader, S.R.No.65293

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and
W.M.P.No.29475 of 2016

LRS (CO)
CA(22/12/2016)