

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.854, 855, 996 & 997/2017 & WMP.Nos.877 & 878/2017 & 974
& 975/2017 in WP.Nos.854, 855, 996 & 997/2017

Saravana Kumar .. Petitioner in
WP.No.854/2017

Prabhakara Pandian .. Petitioner in
WP.No.855/2017

V.B.Vasu ... Petitioner in
WP.No.996/2017

K.P.Alisodai ... Petitioner in
WP.No.997/2017

Vs

1.The Secretary to Government
Home [Police II] Department
Fort St George,
Chennai 600 009.

2.The Director,
Vigilance & Anti Corruption
Department, Chennai 600 016.

.. Respondents in
all the WPs

Common Prayer in WP.No.854 & 855/2017:-Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the records of the 2nd respondent in connection with the impugned orders passed by him in RC.No.F1/38607/2016 dated 21.12.2016 and quash the same. Prayer in WP.No.996/2017: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the records of the 2nd respondent in connection with the impugned order passed by him Na.Ka.No.F1/37475/16 dated 21.12.2016 [Pay Fixation Order] and Na.Ka.No.F1/37475/16 dated 21.12.2016 and quash the same.

Prayer in WP.No.997/2017: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ

of certiorari calling for the records of the 2nd respondent in connection with the impugned order passed by him in RC.No.F1/38615/2016 dated 21.12.2016 and quash the same.

For Petitioners in
all WPs : Mr.M.Muthappan

For Respondents in
all WPs : Mr.K.Dhananjayan, Spl.GP

COMMON ORDER

The issue involved and to be agitated in these writ petitions is one and the same and therefore, all the writ petitions are disposed of by this common order.

2 Mr.K.Dhananjayan, learned Special Government Pleader accepts notice on behalf of the respondents.

3 The petitioner in WP.No.854/2017 is working as a Special Assistant, which is equivalent to the Superintendent cadre with a Grade Pay of Rs.4800/- and he was paid with a scale of pay of Rs.9300+DA+GP 4800 and the scale of pay was revised from time to time, taking into consideration, the increment in Dearness Allowance as well as the Pay Commission Recommendation and the pay of the petitioner was subsequently revised based on the VI Pay Commission Recommendations, in terms of G.O.Ms.No.234, Finance [Pay Cell] Department dated 01.06.2009 and he was fixed with the scale of pay of Rs.10,230 with a Grade Pay of Rs.4800/- and it was revised to Rs.15030 [Rs.10230+4800] and the petitioner is receiving the salary as per the fixation for the last six years. It is further averred by the petitioner that during the year 2015, an inspection was conducted by the Local Audit Fund and an objection was raised stating that the pay of Rs.10230+4800 with effect from 01.08.2010 is incorrect and the petitioner is entitled to pay of Rs.14100/- [Rs.9300+4800], for the period from 01.08.2010 to 31.11.2016. It is the specific case of the petitioner that with regard to the objection raised by the Local Fund Audi, he was not at all put on notice and all of a sudden, the impugned order came to be passed, refixing his scale of pay as well as recovery and challenging the legality of the same, the petitioner has come forward with the present writ petition.

4 The petitioner in WP.No.855/2017 also made a similar brief.

5 The petitioner in WP.No.996/2017 would submit that he entered the service as Junior Assistant on 21.12.1995 on compassionate ground and his services were regularised from the date of his appointment and was given promotion as Assistant on 01.08.2001 and got further promotion as Superintendent on 06.07.2009 FN. It is further averred that his pay was fixed as per G.O.Ms.No.234, Finance [Pay Cell] Department, dated 01.06.2009 at Rs.7000-225-11500 and the petitioner submitted a letter foregoing the arrears of salary for the period from 01.01.2007 to 05.07.2009 and on that basis, his scale of pay was fixed in the cadre of Superintendent at Rs.7000-225-11500 and vide Letter of Finance Department dated 17.08.2009 in Letter No.45113/Pay Cell/2009/1, it was indicated that the scale of pay was at Rs.7000/- was applicable only for those who were promoted as Superintendent in between 12.02.2007 and 31.05.2009 and it was not brought to the knowledge of the petitioner, who continued to receive salary in the scale of pay of Rs.13020 + GP 4800 along with Dearness Allowance with effect from 06.07.2009 with increment for every year. However, on account of the Audit Objection and the Inspection conducted, it was indicated that the petitioner should have fixed in the scale of pay at Rs.11290+GP 2800 + 3% Salary Hike and difference in scale on grade at Rs.2000, totalling to Rs.16,520/- in stead of Rs.13020 and therefore, by means of the impugned order, refixation and consequential recovery came to be ordered and according to the petitioner, he has not been afforded with any opportunity before passing the impugned order and therefore, prays for interference.

6 The petitioner in WP.No.997/2017 was appointed as Typist by way of Direct Recruitment through a selection conducted by the Tamil Nadu Public Service Commission and appointed to service on June 1990 and got his promotion as Assistant in the same Department on 29.05.2015. The petitioner would further aver that his scale of pay was fixed for the post of Assistant with effect from 01.01.2007 in terms of G.O.Ms.No.234, Finance [Pay Cell] Department dated 01.06.2009 retrospectively in the scale of pay of Rs.11100+DA and Grade Pay of Rs.2800 when he was serving as a Typist the date of joining, viz., Rs.12950+GP 2800 and he claims that he was getting the said pay scale from 01.01.2006 to till date. The scale of pay was also revised from time to time as well as increments in Dearness Allowance was also paid to him. The petitioner also got his promotion as Assistant with effect from 29.05.2015. The petitioner would further aver that during the year 2015, an inspection was conducted by the Local Fund Audit and they raised objections stating that the pay of the petitioner at Rs.17960 [Rs.10230+4800] from 01.08.2010 is incorrect as on 01.04.2015 and according to them, the petitioner is entitled to the pay at Rs.15970/- only and as a consequence, the impugned order came to be passed refixing the scale of pay of the

petitioner as well the consequential order of recovery and according to the petitioner, he was not at all put on notice before passing the impugned order.

7 Mr.M.Muthappan, learned counsel for the petitioners has drawn the attention of this Court to the impugned orders which are the subject matter in these writ petitions and would submit that since the refixation as well as the consequential orders of recovery have been passed behind the back of the petitioners and in the absence of any show cause notice or reasonable opportunity, the impugned orders are per se unsustainable in law and therefore, prays for interference.

8 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents, on instructions, would submit that before effecting the order of recovery, all the relevant facts and circumstances have been taken note of and since on account of the same, the Government has to shell out excess money and it also amounts to unjust enrichment and hence, the orders of refixation and recovery came to be passed rightly and prays for dismissal of these writ petitions.

9 This Court paid its best attention to the rival submissions and also perused the materials placed before it including the records maintained by the 2nd respondent.

10 As rightly contended by the learned counsel for the petitioners, before ordering refixation and the consequential order of recovery, the petitioners have not at all been put on notice and no opportunity, whatsoever, have been afforded to them. It is well settled position of law that the orders of refixation and recovery visit the petitioners with grave civil consequences and therefore, they should have been put on notice before passing the impugned orders. But, it has not been done so and hence, on the sole ground, the impugned orders warrant interference.

11 In the result, the writ petitions are partly allowed and the impugned orders passed by the 2nd respondent dated 21.12.2016 are set aside and the 2nd respondent is directed to issue show cause notices to the petitioners for refixation and consequential orders of recovery within a period of four weeks from the date of receipt of a copy of this order and upon receipt of such notices, the petitioners are directed to submit their explanation / response to the 2nd respondent within a further period of three weeks thereafter and the 2nd respondent,

on receipt of the same, is directed to consider the said explanation / response on merits and in accordance with law and pass orders within a further period of eight weeks thereafter and communicate the decision taken, to the petitioners. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

AP

To

1.The Secretary to Government
Home [Police II] Department
Fort St George,
Chennai 600 009.

2.The Director,
Vigilance & Anti Corruption
Department, Chennai 600 016.

+1cc to Mr.M.Muthappan, Advocate, SR.No.3239

+1cc to the Government Pleader SR.3535

WP.Nos.854, 855, 996 & 997/2017

सत्यमेव जयते

SR(CO)
GN(02/02/2017)

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