

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.09.2017
Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P.No.33198 of 2014

& MP.No.1 of 2014

K.Appavoo

.. Petitioner

versus

1.The Commissioner of Municipal Administration,
Chepauk,
Chennai-5

2.The Assistant Director,
Local Fund Audit,
4th Floor, Kuralagam,
Chennai-108.

3.The Commissioner,
Pallipalayam Municipality,
Namakkal District.

... Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, for issuance of Certiorarified Mandamus, to call for the proceedings of the second respondent in its M.M.No.14633/NOC(2)/2014 dated 26.05.2014 and the consequential order passed by the second respondent in its N.M.No.25974/NOC(2)/2014 dated 21.08.2014 and quash the same and consequently direct the respondents to fix the last drawn pay of the petitioner as Rs.11,440/- instead of Rs.10,470/- and fix and pay the pension and other terminal benefits to the petitioner with reference to the last drawn pay and also refund the amount of Rs.1,67,793/- withheld from the DCRG alongwith interest at 12%.

For Petitioner : Mr. N.Balamuralikrishnan

For Respondents: Mr.T.M.Pappiah,
Spl.G.P. (RR1&2)
Mr.R.A.S.Senthilvel for R3

ORDER

The writ petitioner herein, has approached this Court, seeking the following relief:

"To issue a Certiorarified Mandamus, to call for the proceedings of the second respondent in its M.M.No.14633/NOC(2)/2014 dated 26.05.2014 and the consequential order passed by the second respondent in its N.M.No.25974/NOC(2)/2014 dated 21.08.2014 and quash the same and consequently direct the respondents to fix the last drawn pay of the petitioner as Rs.11,440/- instead of Rs.10,470/- and fix and pay the pension and other terminal benefits to the petitioner with reference to the last drawn pay and also refund the amount of Rs.1,67,793/- withheld from the DCRG alongwith interest at 12%."

3.The case of the petitioner is as follows:

The petitioner was appointed as Night Watchman on 10.07.1978 and thereafter, he was promoted as Turn Cork. Thereafter, on 31.05.2011, he was sought to be retired prematurely by the respondents. The same was assailed before this Court in W.P.No.3716 of 2012. This Court disposed of the said writ petition on 07.09.2012 by directing the petitioner to continue in service till his retirement on 31.05.2013. The petitioner thereafter stood retired from service on 31.05.2013. After retirement of the petitioner, objection was raised by the second respondent that during the time of his employment, the petitioner had been wrongly granted excess pay due to wrong fixation. In the said circumstances, while sanctioning relaxation of terminal benefits to the petitioner, the second respondent directed to recover a sum of Rs.1,67,793/- from the retirement benefits. The said recovery order is under challenge before this Court by way of the present writ petition.

4.The learned counsel for the petitioner, at the outset would contend that no prior notice was issued before the amount was deducted from terminal benefits payable to the petitioner and in the absence of any opportunity, the petitioner was unable to explain that the fixation of pay was in order. Therefore, he would submit that the impugned order dated 26.05.2014 is liable to be set aside and further submitted that the issue raised in the present writ petition is squarely covered by a decision of the Supreme Court of India reported in 2015 (4) SCC 334 (State of Punjab and Others Vs. Rafiq Masih (While Washer) and Others). The learned counsel straightaway brought to the attention of this Court to paragraph No.18 of the aforesaid judgment, wherein, it is held that no recovery shall be made

from the employees belonging to Class III & Class IV service and no recovery shall be made from the retired employees. The ratio laid down by the Supreme Court of India is squarely applicable to the case on hand.

5. Upon notice, Mr. T. M. Pappaih, learned Special Government Pleader appearing for the respondents 1 & 2 filed counter affidavit. He would fairly submit that it is not in dispute that no prior notice has been issued to the petitioner before re-fixing the pay and ordering recovery of the amount from the retirement benefits payable to the petitioner. Moreover, the learned Special Government Pleader would not have any dispute as regards the law laid down by the Supreme Court of India in the afore said decision.

6. In view of the same, the impugned order passed by the second respondent in M.M.No.14633/NOC(2)/2014 dated 26.05.2014 and the consequential order in N.M.No.25974/NOC(2)/2014 dated 21.08.2014 are set aside and the writ petition is allowed. Consequently, the respondents are directed to refund the amount of Rs.1,67,793/- withheld from DCRG payable to the petitioner with 10% interest from the date it became payable till the date of the actual payment. As regards the re-fixation of pay is concerned, the respondents are directed to issue notice to the petitioner, calling for the explanation and thereafter, pass orders on merits and in accordance with law. The direction to refund the amount shall be complied with by the respondents/competent authority within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS)

/true copy/

Sub Asst. Registrar

To

1. The Commissioner of Municipal Administration,
Chepauk,
Chennai-5

2. The Assistant Director,
Local Fund Audit,
4th Floor, Kuralagam,
Chennai-108.

3.The Commissioner,
Pallipalayam Municipality,
Namakkal District.

+1 cc to govt.Pleader,sr.66637

+1 cc to Mr.RAS.Senthilvel, advocate,sr.66591

+ 1 cc to Mr.V.Vijay shankar,advocate,sr.66502.

gmr (co)
krd 3/11

W.P.No.33198 of 2014



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