

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.06.2017

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THE HONOURABLE MR. JUSTICE M.SATHYNARAYANAN

W.P.No.30583/2013 & MP.Nos.1/2013 ; 1/2014 & 1/2015

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Petitioner

Versus

- 1.The Secretary to the Government,
State of Tamil Nadu,
Finance (Pay Cell) Department,
Fort St.George,
Chennai-600 009.
- 2.The Principal Accountant General (A&E),
Teynampet, Anna salai,
Chennai.
- 3.The Director,
Motor Vehicles Maintenance Department,
Velachery, Chennai-600 042.
- 4.The Regional Deputy Director,
Government Automobile Workshop,
Pudukkottai Road,
Trichy-600 023.
- 5.Automobile Engineer (Incharge),
Government Automobile Workshop,
Court road,
Thanjavur-613 001.

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Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records of the 2nd respondent's report PO3/10309053/4 R0309053 dated 16.09.2013 and consequential proceedings of 5th respondent Na.Ka.No.A1/12/2013 dated 29.10.2013 and to quash the same as illegal and invalid and direct the respondents to pay the retirement benefits to the petitioner within a stipulated time fixed by this Court.

For Petitioner : Ms.Manjula
For Respondents : Mr.K.Dhananjayan,Spl.GP for
R1,R3 to R5
Mr.V.Vijayashankar for R2

ORDER

By consent the writ petition is taken up for final disposal.

2 The petitioner, aggrieved by the impugned order dated 29.10.2013 passed by the 5th respondent in refixing and reducing pension amount due and payable, came forward to file this writ petition.

3 The petitioner, in the affidavit filed in support of this writ petition, would aver amount other things that he worked as Special Grade charge man in Government Automobile Workshop, Tanjore, and vide proceedings of the 5th respondent dated 31.07.2013, he retired from service. The petitioner would further aver that in G.O.Ms.No.162 of the first respondent Department, dated 13.04.1998, the scale of pay was revised with restrospective effect from 01.01.1996 and his pay scale was revised to Rs.5300/-.

4 However, to his shock and surprise, the petitioner received the copy of the 2nd respondent's report dated 16.09.2013 sent to the 5th respondent stating that his retirement benefits have to be calculated at Rs.6,73,002/- and the reasons has also been assigned. The 5th respondent, based on the said proceedings, in turn addressed vide impugned proceedings, dated 29.10.2013 to the 3rd respondent, requesting the 3rd respondent to pass an order to deduct the following amounts from his retiral benefits:

"[a] The rental due to the Government Housing Board of Rs.42,783/- [Rupees Forty Two Thousand Seven Hundred and Eighty Three only] ; and

[b] The amount which had been paid from 01.01.1996 to 31.07.2013 on account of Revised Pay of Rs.5,300/- under G.O.Ms.No.162, Finance [Pay Cell] Department, dated 13.04.1998."

The petitioner, challenging the legality of the said order, came forward to file this writ petition.

5 The learned counsel for the petitioner would submit that with regard to the wrong fixation, petitioner has no role to play and since he had retired from service as early as on 31.07.2013, the retirement benefits have to be paid as per

the revised pay scale of Rs.5,300/- and would further aver that based on the proceedings of the second respondent, the 5th respondent has requested the 3rd respondent to deduct amounts from the retiral benefits and admittedly, the petitioner has not been put on notice and therefore, prays for appropriate orders.

6 The learned counsel for the petitioner it in support of her submissions relied on the judgment rendered by the Hon'ble Supreme Court reported in 2015 (4) SCC 334 [State of Punjab and others Vs. Rafiq Masih [White Washer] and others].

7 Per contra, Mr.V.Vijayasankar, learned standing counsel appearing for the 2nd respondent, has invited the attention of this Court to the counter affidavit would submit that in para No.7, calculation has been given as to the refixation and would further aver the office of the 2nd respondent calculates the pay fixation / emoluments only at the time of retirement and that too, if the Service Register is forwarded to them along with pension proposal and having noted down the discrepancies, the office of the 2nd respondent has addressed a letter to the 5th respondent, who in turn, requested the 3rd respondent to deduct the amounts from the retiral benefits of the petitioner since wrong fixation has been done and on account of the same the petitioner is having unjust enrichment, the refixation is ordered and prays for dismissal of the writ petition.

8 Mr.K.Dhananjayan, learned Special Government Pleader for the respondents 1, 3 to 5 would submit that based on the communication received from the 2nd respondent, the 5th respondent sent the communication to the 3rd respondent to deduct the amounts from the retiral benefits and would further submit that the 2nd respondent after due and proper application of mind, has rightly made such a recommendation and it cannot be faulted with and prays for dismissal of the writ petition.

9 This Court paid it's best attention to the rival submissions and also perused the materials placed before it.

10 A perusal of the impugned communication sent by the 5th respondent to the 3rd respondent would reveal that before directing the 3rd respondent to refix the pay scale with effect from 01.01.1996 and to recover the excess payment by passing appropriate orders, the petitioner has not at all been put on notice. The order of refixation and recovery visits the petitioner with grave civil consequences and in all fairness, the respondents 3 and 5 ought to have put the petitioner on notice and they have failed to do so. Hence, on this sole ground, the impugned order warrants interference.

11 In the result, the writ petition is partly allowed and the impugned proceedings of the 2nd respondent in PO3/10309053/4R0309053 dated 16.09.2013 and the consequential proceedings of the 5th respondent in Na.Ka.No.A1/12/2013 dated 29.10.2013 are set aside and the respondent 3 and 5 are directed to put the petitioner on notice by enclosing a copy of the communication dated 16.09.2013 of the 2nd respondent in the form of show cause notice within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the show cause notice, the petitioner is at liberty to submit his response within a further period of three weeks thereafter and upon receipt of the same, the respondents 3 and 5 are directed to consider the said response on merits and in accordance with law and pass appropriate orders within a further period of four weeks thereafter and communicate the decision taken to the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CSVIII)

True Copy

Sub-Assistant Registrar

AP

To

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- 5.Automobile Engineer (Incharge),
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Court road, Thanjavur-613 001.

+1 cc to Government Pleader sr 39765
+1 cc to M/s.S.Manjula Advocate sr 39654
+1 cc to M/s.V.Vijay Shankar Advocate sr 39394

W.P.No.30583/2013

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