

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.4204 of 2011 and
M.P.No.1 of 2012 and
WMP.No.20964 of 2016

N.Shanmugam

.. Petitioner

.Vs.

1. The Deputy Director of Local Fund Audit
Salem Corporation,
Salem.

2. The Commissioner,
Salem City Municipal Corporation,
Salem 636 001.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 1st Respondent in நிழு.எண்.அ1.183.2009 இ நாளி 27.04.2009 and the consequential Order passed by the 2nd Respondent in ந.க.எண்.கே2.2616.2008 இ நாளி 27.05.2009 and quash the same and consequently direct the 2nd Respondent to repay the attached amount of Rs.91,689/- with 18% interest from 27.04.2009 and direct the respondents to pay the pensionary benefits based on the last drawn scale of pay Rs.8,900/-.

For Petitioner : Mr.A.R.Nixon

For Respondents: Mr.R.Venkatesh (for R1)

Government Advocate

Mr.G.Sankaran (for R2)

O R D E R

The instant Writ Petition is filed by the petitioners for writ of Certiorarified Mandamus calling for the records relating to the order passed by the 1st respondent in Ne.Mu.No.A1/183/2009, dated 27.04.2009 and the consequential order passed by the 2nd respondent in Na.Ka.No.Ke2/2616/2008, dated 27.05.2009 and quash the same and consequently direct the 2nd respondent to repay the attached amount of Rs.91,689/- with 18% interest from 27.04.2009 and direct the respondents to pay pensionary benefits based on the last drawn scale of pay Rs.8,900/-.

2.The case of the petitioner is that he was appointed as Health Assistant in Salem Municipality in the year 1974 and his service was regularized with effect from 24.12.1975. On completion of about 33 years of service, the petitioner retired from service on 30.06.2008 while served as a Sanitary Inspector. At the time of retirement the petitioner drawn salary in the scale of special grade Sanitary Inspector (i.e., Rs.1820-60-2300-75-2300), from the year 1997 and the pay was two thousand rupees. Being so, on implementation of 6th pay commission by the State Government, the petitioner's salary came to be revised to Rs.5900/- 2900-9900/ and the pay of the petitioner came to be revised and fixed as Rs.6300/- as on 01.01.1996.

3.The petitioner's scale of pay was being fixed as Rs.8900/- as on 01-01-2008. At the crucial date of retirement (i.e.,) on 30.06.2008 the petitioner was in the scale of pay of Rs,.8900/-. Therefore the pension proposal was submitted by the petitioner to the Assistant Commissioner Salem City Municipal Corporation on 30.07.2008. The amount of pension authorized pertaining to the petitioner is Rs.6675/- and the net gratuity payable to the petitioner accrued as Rs.3,23,813/-. The said calculation of pension amount was calculated on the basis and in accordance with the above pay of Rs.8900/- drawn by the petitioner on the date of superannuation.

4.Being so, the 2nd respondent officials without any notice to the petitioner as well as without stating any reason has reduced the scale of pay drawn by this petitioner from Rs.8,900/- to Rs.8,500/-. Consequently the amount of pension authorized by the petitioners got reduced to an amount of Rs.6,375/- from Rs.6,675/-. Further, the authorized gratuity has also got reduced from Rs. 3,23,813/- to Rs.2,17,571/-. It is to be noted that the difference of amount of gratuity is about Rs.91,689/-. Challenging the above said order of the respondents reducing the petitioner's scale of pay as well as the reduction of the authorized pension, the petitioner is before this court.

5.I heard Mr.A.R.Nixon, learned counsel appearing for the petitioner and Mr.R.Venkatesh, learned Government Advocate, appearing for the 1st respondent and Mr.G.Sankaran, learned counsel appearing for the 2nd respondent. I have also perused all the relevant records.

6.The learned counsel for the petitioner has submitted that the above said order is liable to be set aside in limine, for the violation of principles of natural justice that the

impugned order is being passed without any show cause or any notice. The Counsel for the petitioner submitted that by the virtue of the dictum laid down by our Apex court reported in 1994 (2) SCC 521 (Shyam Babu Verma and Others v. Union of India and Others), any excess amount paid during the course of employment cannot be recovered at the disadvantage of the retired Government servant. Further the Government has no power to recover any excess amount already paid to them. The 2nd respondent has no right or power to revise/reduce the pensionary benefits of the petitioner with effect from 01-06-1998. In the absence of any audit objection the impugned order is unsustainable.

7. Though the case is pending from 2011 but, the respondents have not chosen to file any counter. But, the Government Advocate Mr.R.Venkatesh strongly opposed for allowing the writ petition.

8. On perusal of the impugned order herein it is noteworthy that there is no finding as against this petitioner, that any amount has been paid to the petitioner in excess. It is not the case of the respondent that certain amount has been paid to the petitioner and the same is liable to be recovered from the petitioner. Therefore, the judgment relied by the petitioner's counsel has no relevance to the case on hand.

9. Though the 1st respondent vide the impugned order has arrived the authorized pension amount to be paid to the petitioner as Rs.6,375/-, absolutely there is no explanation as to how the 1st respondent arrived at such amount. Further it is obvious from the typed set of papers that vide the pension proposal forwarded by the Assistant Commissioner/ Head of the Office, Salem Corporation dated 30.07.2008 the pension amount admissible to the petitioner is stated as Rs.6,675/-. Further from form-I contained in the pension proposal, the petitioner's last drawn scale of pay is Rs.8,900/-. Moreover from form-II issued by the Assistant Commissioner/ Head of the Office, Salem Corporation the amount of pension is calculated as Rs.6,675/- and the gratuity sanctioned is Rs.3,23,813/-. Though an amount of Rs.91,689/- was stated as the amount to be deducted from the gratuity amount, absolutely there is neither any calculation nor any reason for deduction.

10. Further the impugned order is totally silent as to how and as to why the calculations in the above said proposal/ pension application forwarded by the 2nd respondent to the 1st respondent is now reduced.

11.At this juncture in the interest of justice and taking into account the petitioner's has drawn Rs.8,900/- as his last monthly salary and a proposal has been sent by the 2nd respondent himself, this Court feels deem fit to direct the respondent to pay the pensionary benefits based on the last drawn scale of pay of this petitioner.

12.In the result:

a) this writ petition is allowed, by setting aside the order in Ni.Mu.No.A1/183/2009 dated 27.04.2009, passed by the 1st respondent and the consequential order in Na.Ka.No.K2/2616/2008, dated 27.05.2009 passed by the 2nd respondent.

b) the respondents are hereby directed to repay the attached amount of Rs.91,689/- with 9% interest from 27.04.2009 and further directed the respondents to pay the pensionary benefits based on the last drawn scale of pay Rs.8,900/-.

c) the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

vs

To

1. The Deputy Director of Local Fund Audit
Salem Corporation,
Salem.

2. The Commissioner,
Salem City Municipal Corporation,
Salem 636 001.

+1 CC to Mr.G. Sankaran, Advocate sr 9630

W.P.No.4204 of 2011 and
M.P.No.1 of 2012 and
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SP (07/07/2017)