

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-10-2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12074 of 2004

And

WPMP No.14108 of 2004

Chandrasekar

Petitioner

-vs-

1.The Assistant Commissioner,
Tirunelveli Ward Office,
Tirunelveli Municipal Corporation,
Tirunelveli.

2.The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the first respondent made in Na.Ka.No.C1 6491/2003 dated 18.12.2003 and the consequential proceedings made in Na.Ka.No.C1 6491/2002 dated 23.3.2004 and quash the same.

For Petitioner - Mr.S.Elamurugan

For Respondent-1 - Mrs.K.Bhuvaneswari

For Respondent-2 - No Appearance

ORDER

The order of revision of pay dated 18.12.2003 and the order of recovery dated 23.3.2004, issued by the first respondent, are under challenge in this writ petition.

2. The writ petitioner was appointed as an Electrician in the erstwhile Tirunelveli Municipality on 18.1.1990. Subsequently, the said Municipality was upgraded as Corporation with effect from the year 1994. The post of Electrician was brought under Engineering and Water Supply Service Rules with effect from 1.10.1996, consequent to the up-gradation of Municipality as Corporation. Accordingly, the Technical Post in Engineering and Water Supply was bifurcated into three categories, namely, (i) Technical Assistant, (ii) Skilled Assistant Grade-I and (iii) Skilled Assistant Grade-II.

3. The writ petitioner was categorised as Skilled Assistant Grade-II in the pay scale of Rs.975-1,500/-. Accordingly, the scale of pay of the writ petitioner was fixed in accordance with the Pay Rules. However, an audit objection was raised in respect of pay scale and based on the audit objection, the scale of pay was revised to the writ petitioner in proceedings dated 18.12.2003. Consequent to the revision of pay, an order of recovery was issued on 23.3.2004.

4. The fact remains that there was an erroneous fixation of pay in respect of the writ petitioner and based on the audit objection, the scale of pay of the writ petitioner was revised. However, both the revision of pay as well as the recovery had been issued without issuing any notice and opportunity to the writ petitioner to submit his explanations/objections in this regard. Thus, the impugned orders are in violation of the principles of natural justice.

5. This Court is of the opinion that in respect of revision of pay, the respondents are at liberty to revise the pay scale in accordance with the rules in force. Even if an error took place at the time of fixation, the same can be corrected based on the audit objection and by verifying the same in accordance with the rules, nothing wrong in correcting the mistakes. However, the recovery cannot be imposed in respect of Group-III and Group-IV employees.

6. The Honourable Supreme Court in the case of State of Punjab and Others vs. Rafiq Masih (White Washer) and Others {2015 (4) SCC 334}, issued guidelines in respect of recovery and the relevant portion is extracted as under:-

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

7. The case of the writ petitioner falls under sub-clause (i) of paragraph-18 of State of Punjab case (cited supra). Accordingly, no recovery can be imposed in respect of the employees belonging to Class-3 and Class-4 Service (Group-C and Group-D Service).

8. As far as the revision of scale of pay is concerned, the respondents are at liberty to correct the mistakes, if any, occurred and grant the scale of pay, as applicable to the writ petitioner, in accordance with the rules in force.

9. In respect of recovery, the respondents cannot recover the excess amount already paid to the writ petitioner. Accordingly, the order impugned issued by the first respondent in Na.Ka.No.C1 6491-2003 dated 18.12.2003 and the consequential proceedings made in Na.Ka.No.C1 6491-2002 dated 23.3.2004, are quashed. The respondents are at liberty to correct the mistakes that took place in the revision of pay in accordance with the rules and an order shall be passed after affording an opportunity to the writ petitioner to explain his grievances. As far as the recovery is concerned, the respondents cannot effect any recovery.

10. The writ petition is allowed to the extent as indicated above. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Assistant Commissioner,
Tirunelveli Ward Office,
Tirunelveli Municipal Corporation,
Tirunelveli.

2.The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

+1 cc to Mr.S.Elamurugan Advocate sr 74376

WP 12074 of 2004

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