

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
And
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.44286 of 2016

And

W.M.P.No.38135 of 2016

K.Noorulla Khan ... Petitioner

Vs.

- 1.The Principal District Judge,
District Court Campus,
Krishnagiri - 635 001.
- 2.The District Judge,
Special Court (MACT),
District Court Campus,
Krishnagiri - 635 001. Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus to call for the records relating to the Order bearing ROC No.64/2016 dated 08.11.2016 and 29.11.2016 passed by the 1st respondent and to quash the same as being illegal, arbitrary and contrary to Article 14 and 16 of the Constitution of India and for a consequential mandamus to the 1st respondent to grant the benefit of the order dated 10.09.2014 which granted the petitioner the benefit of pay re-fixation on par with his juniors K.Kalaivani and others.

For Petitioner : Mr.V.Govardhanan
For Respondents : Mr.R.Tholgappian

O R D E R

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J.)

Heard the learned counsel for the writ petitioner for longer time than is really necessary. Heard the learned Standing Counsel for the High Court also.

2.The issue raised in the writ petition lies in a very narrow compass. The writ petitioner is the son of a former employee of a District Court unit at Krishnagiri. Unfortunately, the father of the writ petitioner died on 12.06.1990. His father was otherwise due for retirement on attaining the age of superannuation on 31.08.1993. Thus, he had approximately 38 months of service left for retirement on superannuation basis at the time of his death. The writ petitioner submitted application for consideration for appointment on compassionate grounds on 06.07.1994. That application was considered and he came to be appointed on temporary basis as a Junior Assistant on 04.12.1995 on compassionate grounds.

3.All appointments in the Judicial Ministerial service are required to be made based upon the selections carried out by the Tamil Nadu Public Service Commission. As an exception, if an appointment is made on compassionate grounds, without referring the vacancy to the Tamil Nadu Public Service Commission and then drawing the names of the selected candidates from the Tamil Nadu Public Service Commission, such appointments made on compassionate basis are required to be got approved by the State Government. For that purpose, the writ petitioner was reminded to submit the necessary particulars and certificates.

4.For one reason or other, good or bad or indifferent, the issue of regularisation of his services dragged on for too long a period. Since we are not concerned, we are not pronouncing any opinion as to the justification of the writ petitioner to drag on that issue. It is perhaps, due to the fact that he sought for appointment after the normal date of superannuation of his father and that too after four years after the death of his father. It is sufficient to notice that the State Government passed orders through their G.O.(2D) No.318, Home (Courts V) Department, dated 11.08.2005, regularising his service with effect from 04.12.1995. Thus, nearly after a decades time, his services as a Junior Assistant came to be regularised.

5.In the meantime, one Smt.K.Kalaivani sought for the benefit of higher pay fixation as her immediate junior by name Shri.V.Ramamurthy was getting higher pay. Since Smt.K.Kalaivani was appointed as Copyist on regular basis on 03.09.1984, whereas, her junior Shri.V.Ramamurthy was also appointed as a Copyist long thereafter on 01.10.1991, proceedings have been issued restoring parity in pay in favour of Smt.K.Kalaivani.

6.With the hope that he can also reap a similar benefit, the writ petitioner sought for restoration of his seniority by submitting an application on 25.11.2008. After inviting objections and considering those objections, the learned

Principal District Judge, Krishnagiri, passed orders through his proceedings in Roc.No.14/2014-A dated 20.01.2014. We are not so much concerned with the merits of that order for the present purposes suffice it to notice that towards the end of that proceeding, the learned Principal District Judge has incorporated an appropriate condition, which reads as under:

"However, it is also ordered that the applicant Thiru K.Noorullakhan is not entitled to get any arrears of salary for his above mentioned notional promotions and that he is given the seniority by re-fixation of seniority as above alone and that the said notional promotions shall be calculated for all purposes except back wages and that he is ordered to be considered to further promotion with reference to the above order of seniority in the next/ immediate arising vacancy/ vacancies in the post of Grade I Bench Clerk in Category II of TNJMS, without disturbing or reverting his juniors who have already been promoted to the post of Grade I Bench Clerk and without prejudice to the seniority of Thiru K.Noorullakhan."

7.Before proceeding further, it is only appropriate to notice that Smt.K.Kalaivani was promoted as Junior Assistant on temporary basis on 01.04.1993 and was also treated to have been regularly promoted as Junior Assistant with effect from 31.01.1997. On the ground that the date of regularisation of the temporary promotion of Smt.K.Kalaivani is with effect from 31.01.1997, which date is beyond 04.12.1995, the date with effect from which his services have been regularised by the State Government through their G.O.(2D) No.318, Home (Courts V) Department, dated 11.08.2005, the writ petitioner is now seeking pay parity drawing a comparison of his case with that of the aforementioned Smt.K.Kalaivani. That is how the writ petitioner came to submit an application on 05.09.2014.

8.The learned Special District Judge (MACT), Krishnagiri, where the writ petitioner was at that point of time working as Sheristadar passed orders stepping up the pay of the writ petitioner with effect from 01.12.2008 and also ordered for the arrears of pay and allowances from 01.12.2008 to be drawn and paid to him. He passed such an order through proceedings in ROC No.319/2014, dated 10.09.2014. Accordingly, arrears amounting to Rs.3,83,754/- were drawn and paid to him. This came to be scrutinized and hence steps for recovery of the arrears duly stepping down his pay have been initiated. Orders have been passed on 08.11.2016 to repay the pay arrears amount of Rs.3,83,754/- disbursed to him earlier. It is this proceedings which is under challenge in this writ petition.

9.The fundamental premise upon which the claim of the writ petitioner to be treated as senior to Smt.K.Kalaivani is erroneous. The reason being Smt.K.Kalaivani was promoted as a Junior Assistant on temporary basis, to begin with on 01.04.1993 and she was later on treated as regularly promoted with effect from 31.01.1997. When once a temporary promotee secures regular promotion and in between these two dates there is no interruption in service, the length of temporary service cannot normally be deprived for being counted for the purpose of seniority, but however, such an issue has not bothered the District Administration or the concerned individual for the reason that the writ petitioner came to be appointed for the first time on temporary basis as a Junior Assistant only on 04.12.1995 on compassionate grounds.

10.As on 04.12.1995, Smt.K.Kalaivani has rendered more than two years eight months of service as a Junior Assistant on temporary basis. Therefore, there was never an occasion, either for her or for that matter the District Administration to treat the writ petitioner as senior to Smt.K.Kalaivani. Well, the petitioner is now seeking to take advantage of the orders passed by the State Government through their G.O.(2D) No.318, Home (Courts V) Department, dated 11.08.2005. Infact, it is out of sheer compassion rather than due to compulsion of law, the State Government has considered it appropriate to regularize his appointment which was made on compassionate basis.

11.Further, the learned Principal District Judge, Krishnagiri, who has passed the orders on 20.01.2014 has done so, by incorporating an appropriate condition therein, which we have adverted to supra. Contrary to this condition stipulated in the order dated 20.01.2014, the writ petitioner drew a representation on 05.09.2014 asking for financial benefits. He was working as a Sheristadar at that point of time at the Special District Judges Court (MACT), Krishnagiri. Being a Chief Ministerial Officer of that Court, he has obviously induced the error in the mind of the Presiding Officer of the Court, who without much of a serious contemplation or study and obviously his attention was not drawn to the condition contained in the order dated 20.01.2014 and hence he passed orders immediately on 10.09.2014, stepping up the pay of the writ petitioner and also ordering for arrears to be worked out from 01.12.2008 and to be paid as well to the petitioner.

12.The learned counsel for the writ petitioner would submit that as the writ petitioner has gained seniority over his juniors, his making a claim seeking financial benefits is an absolutely legitimate one and it does not amount to any error of judgment much less inducement of error on his part.

13. We do not consider that the submission made is sustainable, for, more than the Presiding Judge of the Special District Judges Court (MACT), it is the writ petitioner who is aware of the condition incorporated in the proceedings dated 20.01.2014. When once such a proceedings has been issued duly imposing a condition denying him any financial benefits arising from restoration of seniority, and having accepted such an order the writ petitioner cannot open his mouth a little too wide and make any such claim for financial benefits on 05.09.2014. The error of judgment on the part of the Presiding Officer of the Special District Judges Court (MACT) was caused as he has not consulted the Principal District Judge of the District Unit nor the High Court on the Administrative side nor any Financial and Pay Fixation Expert but instead without serious consideration in less than five days time, he proceeded to accord the benefit which the writ petitioner sought for on 05.09.2014 by passing orders on 10.09.2014. This is clearly an error of judgment on the part of the learned Special District Judge (MACT). As a cumulative consequence of these errors, the writ petitioner derives a huge financial benefit running to Rs.3,83,754/-.

14. Public money is to be spent for lawful and authorized purposes. The custodians of public money hold the said money as trustees of the entire citizenry. Monies cannot be disbursed left, right and centre, without there being any sanction of law. Therefore, the Courts have recognized consistently the principle that wherever an erroneous payment has been made, the recovery should be ordered. The only exception recognized in case of Government servants/ public servants was that the error which has resulted in excess payment is not induced by the person concerned either due to mis-representation of fact or law or by playing fraud. Not drawing the attention of the Presiding Officer of the Court, where the writ petitioner is incidentally working as Chief Ministerial Officer, specifically to the condition contained in the order dated 20.01.2014 subject to which his seniority was restored, amounts to misrepresentation. If the inducement of error is completely traceable and attributable to the person concerned, he cannot be saved from the obligation to refund and return the monies so excessively drawn by him.

15. There is also further exception carved out by the Courts relating to recovery where excess payments have been made on month to month basis. Perhaps, the person receiving such excess payment would have legitimately expended the same also. He may not have set apart excess payments received by him each month in a separate account in anticipation of a call coming to him at a future point of time to refund the same. Particularly, the Government servants plan their budget based upon what they get each month. In such circumstances, the savings, if any, which

they resort to would have been far less than possibly the excess amount paid to them. In such circumstances, the Courts have leaned in favour of the view not to recover the excess amounts so paid over a long period of time to the Government servants.

16. In dark contrast to the exceptions carved out by the Courts with regard to the recovery of excess amounts, in the instant case, the error induced is certainly attribute to the conduct of the writ petitioner and also due not exercising proper care by the Presiding Officer of the Court where he was working as a Sheristadar. He has drawn in one lumpsum a huge sum of Rs.3,83,754/- as arrears. The writ petitioner could not be expected to have spent away uselessly the entire amount and therefore, ordering for recovery in the instance case is not wholly un-just.

17. However, the learned counsel for the writ petitioner is certainly right in drawing our attention specifically to the representation submitted by the writ petitioner on 24.11.2016, which is enclosed at page no.37 of the paper book filed along with this writ petition, in which in internal page 3, the writ petitioner made the following request:

"If your honour denied that the arrear amount which I had received is not entitled, I am inclined to obey the order of the Hon'ble Principal District Judge, Krishnagiri. I am obliged to do the same were as due to my present and past family situation, I am in a situation in obliging the order of the Hon'ble Principal District Judge proceedings to pay recovery of amount in one lumpsum kindly consider and recovery may be ordered on monthly installments basis."

18. Therefore, the writ petitioner cannot resile from the stated position taken by him. However, we gather that he has a large family who are dependants on him and that his wife has been surgically operated upon for breast cancer suffered by her and consequently, he was incurring huge expenditure on the treatment and the follow up of the health condition of his wife.

19. Therefore, taking all the factors into account, including the fact that the writ petitioner has got another eight years of service for his eventual superannuation, we consider it appropriate to grant installments spread over a period of five years for effecting the recovery. Accordingly, the recovery shall be made from the pay payable to the writ petitioner proportionately commencing from 01.09.2017 and at the end of the recovery, a Certificate shall also be furnished by the District Unit Head that the money has been completely recovered from the

writ petitioner and also is remitted to the Government Account. Such Certificate shall also be enclosed while processing the pension papers of the writ petitioner to the Pension Payment Officer.

20.It goes without saying that the pay of the writ petitioner is also entitled to be stepped back. The writ petition is otherwise without merit and stands disposed of with this order. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The Principal District Judge,
District Court Campus,
Krishnagiri - 635 001.

2 .The District Judge,
Special Court (MACT),
District Court Campus,
Krishnagiri - 635 001.

+lcc to M/s.Row & Reddy, Advocate in sr.no.57808

W.P.No.44286 of 2016

And

W.M.P.No.38135 of 2016

RK(CO)

NR 08/09/2017

सत्यमेव जयते

WEB COPY