IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18489 of 2004

A.Sivaraman ... Petitioner

Vs.

The Revenue Divisional Officer,
Mayiladuthurai,
Nagapattinam District. ... Respondent

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the record relating to the proceedings in Na.Ka.No.6856/2003/A1 dated 16.03.2004 of the Revenue Divisional Officer, Mayiladuthurai, the respondent herein and quash the same.

For Petitioner : Mr.R.Muthukannu

For Respondent : Mrs.K.Bhavaneswari
Government Advocate

O R D E R

The petitioner has filed this writ petition for the issuance of writ of certiorari calling for the proceedings in Na.Ka.No.6856/2003/A1 dated 16.03.2004 at the Revenue Divisional Officer, Mayiladuthurai, Nagapattinam District and quash the same.

2.The case of the petitioner is that initially he was appointed as Junior Assistant in the year 1982. The petitioner had served in various cadres in the R.D. & L.A. Department and retired from the service. While he was working in the R.D. & L.A., the petitioner had acquired training at the Training Centre at Krishnagiri Dam and he had also passed the Account test for the said Department. While he was working as a Junior Assistant in the year 1989, he had been sanctioned an advance increment in the cadre of Junior Assessment by the Block Development Officer, Dharmapuri vide RC.2830/90 dated 20.06.1990.

3.Thereafter, the petitioner had been absorbed in the Revenue Unit with effect from 01.08.1991. As the petitioner acquired the requisite qualification, he was promoted to the post of Assistant with effect from 04.12.1995 in the combined Thanjavur District and opted for Nagapattinam District subsequently. As the petitioner had passed the Account test for subordinate officers Part - I as early as in the year 1986, advance increment was awarded to him for the post of Assistant with effect from 1995 and the petitioner was promoted to the post of Assistant.

4.Whileso, the respondent /Revenue Divisional Officer, Myailaduthurai had ordered for recovery of difference of pay and allowance paid to the petitioner with effect from 04.12.1995 and reducing the basic pay from 5100 + 225 PP to 5000 +220 PP vide orders in RC.6856/2003/A.1 dated 16.03.2004 on the basis of the audit Report of the Local fund Audit to the effect that the advance increment sanctioned to the petitioner with effect from 04.12.1995 is irregular.

5.The learned Senior counsel appearing for the petitioner would submit that the matter is squarely covered by the Supreme Court judgment reported in 2015 4 SCC 334 as follows:

> 18. It is not possible to postulate all situations of hardship, which would govern employess 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 herein above, we may as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group Ç'and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from 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 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.

6.In view of the above, the order of the respondent is set aside as it was passed behind the back of the petitioner. Therefore, the writ petition is allowed. No costs.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To.

The Revenue Divisional Officer,
Mayiladuthurai, Nagapattinam Dt.

+1 C.C. To Govt.Pleader, SR.NO.69465

W.P.No.18489 of 2004

RK (CO)
ADD 31.10.2017