

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2017

CORAM

THE HONOURABLE MR. JUSTICE. M.DHANDAPANI
W.P.No.29798 of 2004
and
W.P.M.P.No.36190 of 2004

S.Murthy

.. Petitioner

Vs

1.The Accounts Officer,
Office of the Accountant General
(Accounts & Entitlements),
Tamil Nadu,
Anna Salai,
Chennai 18.07.2003

2.The Divisional Officer,
Fire & Rescue Services,
Dharmapuri.

3.The Treasury Officer,
Dharmapuri.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the proceeding of the first respondent vide. Pen 22/III/M70-684/Rvn/04-05/87, Dated--/9/2004, quash the same and direct the respondents to pay the applicable pension without revision.

For Petitioner : Mr.V.Manohar

For Respondents : Mr.Ravikumar, ACGSC
for R.1

Mr.M.Elumalai,
Government Advocate
for R.2 and R.3

O R D E R

The writ petition has been filed to call for the records pertaining to the proceeding of the first respondent vide Pen 22/III/M70-684/Rvn/04-05/87, Dated--/9/2004, quash the same and direct the respondents to pay the applicable pension without revision.

2.The case of the petitioner is as follows:

2.1.The petitioner joined the Fire and Rescue Service of Tamil Nadu as Driver and Mechanic on 08.06.1973. After completing his service of 30 years 3 months and 22 days, he applied for Voluntary Retirement and the same was accepted by the second respondent - Department. Accordingly, he was permitted to retire from service on 30.09.2002.

2.2.At the time of retirement from service, the petitioner was drawing the time scale of pay of Rs.6,200 + 5% 275 + SP.Pay 40 etc. But, the second respondent fixed the pension on the pay scale of Rs.5,000 - 150 - 8000 - (SG). Therefore, the petitioner requested the respondents to revise his pension. The first respondent, instead of giving due consideration to the request of the petitioner, after a lapse of eleven years, re-opened the pay fixed to him, on 19.2.1993. The fixation of salary for the Driver and Mechanic was revised from 26.8.1992 to the petitioner with the concurrence of the first respondent, similar to the pay scale given in other Departments of the Government and the salary was paid to the petitioner. The first respondent, after the retirement of the petitioner, sent a communication to the third respondent to recover a sum of Rs.1,52,155/- from the petitioner. Accordingly, the third respondent passed the impugned order of recovery of a sum of Rs.1,52,155/- from the petitioner as he was paid the excess pay and allowances of pension/dearness relief similar to that of Sri.S.Murthy. As against the impugned order of recovery, the present writ petition has been filed.

3.The learned counsel for the petitioner submitted that before passing the impugned order of recovery, the respondents should follow the principles of natural justice. But, the third respondent, without following the principles of natural justice and without giving any notice to the petitioner, passed the impugned order. Hence, the impugned order is arbitrary and is in violation of procedure.

3.1.In support of his submission, the learned counsel for the petitioner relied on the decision of the Supreme Court in the case of STATE OF PUNJAB AND OTHERS Vs. RAFIQ MASHI (WHITE WASHER) [2005 (4) SCC 334], wherein paragraphs 18 and 19 of the

Supreme Court held as follows:

"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.

19.We are informed by the learned counsel representing the appellant State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."

4.On a perusal of the impugned order, it is clear that the

impugned order passed by the third respondent is against the principles of natural justice. It is seen from the records that this Court while admitting the writ petition, granted an order of interim stay of recovery.

5.Considering the facts and circumstances of the case and in view of the decision of the Supreme Court referred to supra, this Court is inclined to interfere with the impugned order passed by the first respondent. Accordingly, impugned order is set aside. The Writ petition is allowed. There is no order as to costs. Consequently, connected W.P.M.P.is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Accounts Officer,
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(Accounts & Entitlements),
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Anna Salai,
Chennai 18.07.2003

2.The Divisional Officer,
Fire & Rescue Services,
Dharmapuri.

3.The Treasury Officer,
Dharmapuri.

+1 cc to Mr.T.Ravikumar Advocate sr 29798
+1 cc to Mr.V.Manohar Advocate sr 63802

W.P.No.29798 of 2004

rsy(co)
aa17/11/2017