IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2018

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.2899 of 2012

P.Subbarayalu ... Appellant/ Petitioner

Vs.

1.The Director of Local Fund Audit,
Kuralagam, Chennai-600 018.

2.The Director of Municipal Administration,
Ezhilagam, Chepauk,
Chennai-600 005. ... Respondents/ Respondents

Writ Appeal is preferred under Clause 15 of the Letters Patent against the order dated 12.09.2012 made in W.P.No.18488 of 2010 Writ of Mandamus Calling for the entire records leading to the issue of Proceeding passed by the 1st Respondent in O.M.No. 48308/NOS(2)/2009, dated 08.05.2010, which has confirmed the deductions effected in proceedings No.N1.Mu. 38638/K2(6) 99, dated 13.07.1999 and quash the same by re-fixing the salary with revised pensionary benefits and direct the 1st respondent to refund sum of Rs.27,730/- and Rs.3,000/- with 18% interest per annum

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For Appellant : Mr.R.Muralidharan

For respondents : Mr.V.Kathirvelu,
Special Government Pleader

https://hcservices.ecourts.gov.in/hcservices/

JUDGMENT

(Judgment of the Court was made by M.M.SUNDRESH,J.)

This writ appeal is directed against the order of the learned single Judge while setting aside the order was pleased to direct the respondents to refund the amount. Though the order of the learned single Judge is in favour of the appellant, claiming interest, the present appeal has been filed.

2. The learned counsel for the appellant would submit that when the recovery is found to be bad, the consequence will have to be followed and reliance has been made on the decision of the Division Bench of this Court in Dr.M.R.Kokan, M.S. Vs., The Secretary to the Government of Tamil Nadu, Health and Family Welfare Department, Chennai-9 and others (2017 (2) Writ Law Reporter 392) and also the decision of the learned single Judge of this Court in V.Mahalingam Iyer V. The Accountant General (Accounts and Entitlements) Tamil Nadu, Madras and two others (1989 (1) Law Weekly 570).

3. The order of recovery was set aside only on the ground that without affording an opportunity, based on the audit objection, the same cannot be made. The fact that the appellant attained the age of superannuation was taken note of. Therefore, it was passed by taking into account that the appellant was not responsible for wrongly fixing the pay scale.

4. In such view of the matter, the decisions relied upon by the learned counsel for the appellant are not applicable to the case on hand. In those cases, the issue is with respect to the delay in payment of settling the terminal benefits and withholding of provident fund. These are all the amount which the retired employee is entitled in law. The case on hand is different on facts. The learned single has exercised his discretion in favour of the appellant instead of remitting the matter back to the respondents. We do not find any merit in this writ appeal and the same stands dismissed. No costs.

Sd/-

Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

raa

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To

1.The Director of Local Fund Audit,
Kuralagam, Chennai-600 018.

2.The Director of Municipal Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

+1cc to Mr.R.Muralidharan , Advocate SR.No. 77016

W.A.No.2899 of 2012

ASK(03/12/2018)

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