

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18783 of 2015
and
M.P.Nos.2 & 3 of 2015

T.G.Raman

..Petitioner

vs

1. State of Tamil Nadu
Rep.by its Secretary to Government
Social Welfare Department
Fort St.George, Chennai - 600 009.
2. The State Commissioner of Differently Abled
K.K.Nagar, Chennai - 600 078.
3. The District Differently Abled Welfare Officer,
Vellore.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the orders passed by the 2nd Respondent in Na.Ka.No.432/Nir-3/2015, dated 07.04.2015 and the Order passed by the 3rd Respondent in Na.Ka.No.2912/A/14, dated 08.04.2015 and quash the same consequently direct the Respondents to pay DCRG, Surrender of Earn Leave, General Provident Fund and Special Provident Fund amount to the Petitioner with 12% interest compound annually as per G.O.Ms.No.122 Finance (Pension)Department dated 20.02.1995.

For Petitioner : M/s.A.R.Nixon
For Respondents : M/s.A.Srijayanthi, Spl GP

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O R D E R

The relief sought for in this writ petition is to call for the records in relation to the orders passed by the 2nd Respondent in Na.Ka.No.432/Nir-3/2015, dated 07.04.2015 and the order passed by the 3rd Respondent in Na.Ka.No.2912/A/14, dated 08.04.2015 and quash the same and to direct the Respondents to pay DCRG, Surrender of Earn Leave, General Provident Fund and Special Provident Fund amounts and all other consequential benefits.

2.The writ petitioner was initially appointed as Workshop Attendant (Electrical), Differently Abled Social Welfare Departments on 05.11.1984, and retired from service on 31.01.2015 on attaining the age of superannuation. The petitioner had served about 31 years in the Department. The pay as applicable has been fixed based on the Government orders and pay rules in force.

3.The learned counsel appearing on behalf of the writ petitioner made a submission that there was no misrepresentation or otherwise on the part of the writ petitioner. The pay was fixed by the respondent establishment and subsequently, after a lapse of many years and based on the audit objections, it was found that there was an error in the fixation of pay of the petitioners. Thus, the pay was reduced and consequently, an order of recovery also has been issued. The learned counsel appearing for the petitioner states that no notice or opportunity was given to the writ petitioner before issuing the impugned order of reduction of pay and recovery. This apart, the order of recovery has been issued after the retirement of the writ petitioner and he was allowed to retire from service. Thus, the actions of the respondent are in violation of the principles of natural justice.

4.The learned Special Government Pleader opposed the contentions by stating that the pay as applicable has been wrongly fixed in the case of the writ petitioner and the authorities competent are entitled to correct the mistakes in respect of wrong fixation. Thus, the consequential order issued by the authorities for recovery is also in accordance with the rules in force. The impugned order is nothing but the correction or error occurred in the pay fixation and therefore, there is no infirmity as such. Thus, the writ petition deserves to be rejected.

5.Considering the arguments of both the learned counsels, this Court is of an opinion that the authorities competent are empowered to correct the errors or mistakes if any occurred in the fixation of pay or re-fixation. However, the excess payment if any made on account of such erroneous fixation cannot be recovered after a lapse of many years and more specifically, after the retirement of an employee. This apart, any order affecting the service condition of an employee cannot be passed without issuing a show cause notice and providing an opportunity to the employee concerned. The legal principles in this regard are settled by the Hon'ble Supreme Court of India in the case of State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334]. The Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgement, which is extracted hereunder:

"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.

6.The Apex Court in unequivocal terms held that excess payment of recovery from the retired employees are impermissible. Further, the writ petitioner was working in Group-III Post and on that ground also, the excess payment paid to the writ petitioner cannot be recovered. However, the authorities are entitled to correct the mistakes in respect of the fixation and the re-fixation of pay of the petitioner. Thus, the respondents are at liberty to correct the mistakes and pay the pension as applicable to the petitioner and in accordance with the Government orders and pay rules in force. However, the excess payment already paid to the writ petitioner cannot be recovered as the Apex Court held that excess payment cannot be recovered from the retired employees.

7. Accordingly, the impugned order in respect of recovery alone is quashed and in respect of fixation, the respondents are at liberty to correct the mistakes if any occurred and pay the correct pension as per the Government orders and pay rules in force.

8. In this view of the matter, the impugned order passed by the second respondent in Na.Ka.No.432/Nir-3/2015, dated 07.04.2015 and the order passed by the 3rd Respondent in Na.Ka.No.2912/A/14, dated 08.04.2015 are quashed to the extent of recovery alone. In respect of fixation, the respondents are at liberty to do so in accordance with the rules in force. The excess amount paid if any recovered from the writ petitioner, shall be repaid to the writ petitioner and all other terminal benefits and other pensionary benefits as applicable also to be paid to the writ petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

9. Accordingly, the writ petition stands partly allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
State of TamilNadu,
Social Welfare Department
Fort St.George, Chennai - 600 009.
2. The State Commissioner of Differently Abled
K.K.Nagar, Chennai - 600 078.
3. The District Differently Abled Welfare Officer,
Vellore.

+1cc to M/s.A.R.Nixon, Advocate, S.R.No.41252.
+1cc to the Government Pleader, S.R.No.41872.

W.P.No.18783 of 2015

PVS (CO)
BM 16/07/2018