

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.10455 of 2008

S.Jagadeesan

... Petitioner

Versus

1.The Director,
Office of the Local Fund Audit,
Kuralagam, 4th Floor,
Chennai - 108.

2.The Commissioner,
Tirupathur Municipality,
Tirupathur,
Vellore District.

3.The Commissioner,
Rasipuram Municipality,
Rasipuram,
Namakkal District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records pertaining to order bearing No.Na.3401/06/C1, dated 29.03.2007 and quash the same and consequently direct the 3rd respondent to refund the amount of Rs.61,410/- recovered from his terminal benefits together with interest from the date of recovery till the date of payment and allow the pensionary benefits admissible to Grade-I, dated 31.03.2005 till date.

For Petitioner : Mr.R.Ramesh

For Respondents: Mrs.Thanga Vadhana Balakrishnan, for R1
Additional Government Pleader.

: Mrs.C.K.Vishnu Priya, for R2

: Mr.I.Paranthaman, for R3

O R D E R

The prayer in the writ petition is to call for the records pertaining to order bearing No.Na.3401/06/C1, dated 29.03.2007 and quash the same and consequently direct the 3rd respondent to refund the amount of Rs.61,410/- recovered from his terminal benefits together with interest from the date of recovery till the date of payment and allow the pensionary benefits admissible to Grade-I, dated 31.03.2005 till date.

2. The petitioner has filed this Writ Petition, challenging the order of the third respondent, by which the third respondent sent his recommendation to the first respondent indicating that excess amount has been paid to the petitioner while fixing his pay in the cadre of Grade-I fitter and therefore, the said amount has to be recovered from him to the tune of Rs.61,410/-

3. The learned counsel for the petitioner would contend that the petitioner was working as Trainee Fitter in the Department of Chief Engineer, Public Health and Municipal Work, Chepauk, Chennai - 5 where he worked till 1974. Later on he was absorbed under the Arcot Municipality by proceedings dated ROC.No.2296/C1/73, dated 28.02.1973 and posted as Fitter Trainee. Subsequently, by proceedings No.E/1508/73, dated 01.03.1973 of the Executive Engineer, TWAD Board, he was absorbed in TNWD department as a Fitter, Grade - I under the second respondent i.e., Thirupathur Municipality. The petitioner was also allowed to retire from service. After his retirement, when pensionary proposals were made to the first respondent, he sought the service particulars from the third respondent. It is at this stage, the third respondent, in order dated 29.03.2007 has indicated that at the time of regularizing the service of the petitioner in the cadre of Fitter Grade-I, he was erroneously paid the salary payable to the cadre of Fitter Grade-II and therefore, the excess amount has to be recovered. It is this order, which is challenged in this Writ petition.

4. The learned counsel for the petitioner would contend that the petitioner was all along working as Fitter Grade-I. However, after his retirement, the impugned order has been passed stating that at the time of regularizing his service in the cadre of Fitter Grade-I, erroneously, the pay applicable to Fitter Grade-II has been paid. Thus, according to the counsel for the petitioner, before seeking to recover the excess amount paid to the petitioner, the petitioner was not put on notice. In other words, the order of recovery is without following the principles of natural justice. Even otherwise, when once the petitioner is permitted to retire from service, the respondents have no jurisdiction to recover the amount from the terminal benefits of the petitioner.

5. The learned Government Advocate appearing for the first respondent would contend that at the time of regularizing the service of the petitioner in the cadre of Fitter Grade-I, erroneously, the pay of the petitioner was fixed in the cadre of Fitter Grade-II with effect from 01.06.1988 and such fixation of pay is contrary to GO Ms. No.304, Finance (Pay Cell) Department dated 20.08.1990. By virtue of such erroneous fixation, the subsequent pay disbursed to the petitioner was found to be excess. After retirement, when pensionary proposals were sought from the third respondent, it was indicated that excess pay was made to the petitioner and such amount has to be recovered from him. Subsequently, the excess amount has been adjusted and a cheque dated 05.10.2007 for Rs.61,410/- was sent to the third respondent.

6. The learned Government Advocate appearing for the first respondent would further submit that the petitioner's appointment was not denied, but while fixing his pay in the cadre of Fitter Grade-I, the pay applicable to Fitter Grade-II was paid to him. The scale of pay was wrongly fixed to the petitioner as 1200-2040 instead of 1200-1060 with effect from 01.06.1988 and continued upto 01.03.2005, which is in violation of the instructions given by the Government in G.O NO.304 Finance (Pay Cell) Department dated 20.08.1990. In such circumstances, the learned Government Advocate prayed for dismissal of the writ petition.

7. Heard both sides. As per the order passed in G.O NO.304 Finance (Pay Cell) Department dated 20.08.1990, the pay structure applicable to the selection and special grade employees was re-structured. The relevant portion of the Government Order is as follows:-

"Accordingly, in partial modification of the orders issued in paragraph 9 of the Government Order first read above, the Government direct that the scheme of selection grade and special grade be allowed to all the employees eligible for movement to selection grade and special grade as indicated in the Annexure-I to this order replacing the existing Appendix-VII to the Government Order first read above.

Provided further, wherever the promotion post happens to be on a lower scale of pay than the selection grade scale of pay given in Annexure - I employees in such posts are eligible for the selection grade scale as applicable to promotion post only"

8. In the decision of the Division Bench of the Honourable Supreme Court in Sahib Ram vs State of Haryana and others reported in 1995 Supp(1) SCC 18, it was held that in the absence of any misrepresentation on the part of the employee, excess

amount, even if paid to him due to an erroneous calculation, cannot be recovered. In para No.3 and 5 of the said judgment, it was held as follows:-

"3. The Principal of the College, where the appellant was working as a Librarian allowed him the revised pay scale of Rs.700 - 1600 purporting to act under the above order. However, the Government of Haryana directed the Principal to withdraw the pay scale of Rs.700 - 1600 allowed to the appellant. The appellant had challenged their direction in CWP.No.10988 of 1993 in the High Court of Punjab and Haryana. The High Court by the impugned order dated 9-9-1993 dismissed the writ petition. Thus, this appeal by special leave."

And

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

9. Following the same, this Court in S.A. Kanthimathi vs Director of School Education, Madras and others reported in (2006) 1 MLJ 695, has held as follows:-

"3. A perusal of the impugned order of recovery nowhere discloses that the petitioner has misrepresented or suppressed for the receipt of excess scale of pay. Further, no notice or opportunity was given to the petitioner before the impugned order of recovery was passed and as stated, the petitioner also retired from service."

10 The case on hand clearly falls within the above categories. Applying the above order of the Hon'ble Supreme Court, the petitioner's payment of salary which was wrongly fixed by the respondents from 1100 - 1660 to 1200-2040 is not at the fault of the petitioner and pay was fixed only by the third respondent herein.

11. As per the Judgments cited on behalf of the petitioner, the petitioner is entitled to and eligible to get refund of the amount recovered by the third respondent by the above said order. The petitioner was Superannuated on 31.03.2005 and the impugned order was passed on 28.02.2009. As per the orders of the Hon'ble Supreme Court, the amount recovered from the retirement benefit of the employee cannot be sustained.

12. It could be seen that the first respondent returned the money recovered exclusively to the third respondent by a cheque No.474876/Indian Overseas Bank, dated 05.10.2007, by his office letter Rc.No.17297/MPP(2)/2007, dated 13.10.2007 as per the receipt produced by the learned Government Pleader, wherein the Commissioner of Rasipuram / third respondent has received the same on 14.10.2007.

13. In view of the facts and circumstances of the case, this Court is inclined to pass an order directing the petitioner to give a representation along with the copy of this order to the third respondent within a period of two weeks from the date of receipt of a copy of this order and the third respondent is directed to disburse the amount with interest at the rate of 6% to the petitioner, within a period of four weeks from the date of receipt of the representation.

14. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1. The Director,
Office of the Local Fund Audit,
Kuralagam, 4th Floor,
Chennai - 108.

WEB COPY

2.The Commissioner,
Tirupathur Municipality,
Tirupathur,
Vellore District.

3.The Commissioner,
Rasipuram Municipality,
Rasipuram,
Namakkal District.

+1cc to Government Pleader SR.NO.39958

GJII(CO)
sm:25.9.2018

W.P.No.10455 of 2008



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