

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6838 of 2013

N.Ramalingam

...Petitioner

Versus

1.The Chief Engineer,
Agricultural Engineering Department,
Anna Salai, Nandanam,
Chennai - 600 035.

2.The Assistant Executive Engineer (AE),
Agricultural Engineering Department,
Cuddalore 607 002.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue an appropriate Writ, Order or Direction, more particularly a Writ in the nature of Writ of Certiorarified Mandamus to call for the records connected with the impugned proceedings bearing Letter No.E/1781/2010 dated 17.08.2010 of the 2nd respondent herein and quash the same and consequently direct the respondents to revise the pay of the petitioner prior to the issuance of the impugned proceedings and effect his terminal and pensionary benefits accordingly within a time frame.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.A.Ansar
Government Advocate for R1 & R2

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The relief sought for in this writ petition is to call for the records in connection with the impugned proceedings bearing Letter No. E/1781/2010 dated 17.08.2010 of the second respondent and quash the same and consequently, direct the respondents to revise the pay of the petitioner prior to the issuance of the impugned proceedings and effect his terminal and pensionary benefits.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner joined in the Agricultural Engineering Department at Cuddalore as Welder

Grade-III on 16.05.1980. The IV Pay Commission was implemented and Grade-III posts were abolished and all Grade-III posts were upgraded as Grade-II. The petitioner continued as Grade-II Welder till his date of superannuation and completed 31 years of service.

3.The grievance of the writ petitioner is that though his post was upgraded as Grade-II, the pay applicable to the post has not been properly fixed even at the time of submitting the pension proposal in the revised scale of pay.

4.However, it is brought to the notice of this Court that the entire issues in respect of the present writ petition have been adjudicated by the Madurai Bench of the Madras High Court in W.P.(MD).No.1223 of 2012 and an order was passed on 15.04.2015, and the relevant paragraphs are extracted hereunder:-

"18.Heard the learned counsel appearing for the parties.

19.I have carefully perused the materials on record and considered the arguments of counsel for the parties.

20.The learned counsel for the petitioner and respondents reiterated the averments made in the affidavit and counter affidavit.

21.The learned counsel for the petitioner relied on the following judgments:-

(i) 2015(1)LLJ 455 (State of Punjab and others Vs. Rafiq Maish (White Washer) etc.,) para 7 reads as follows:-

"7.Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish

that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

(ii) 2012(8) SCC 417 (Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others), Para 8 reads as follows:-

"8.We are of the considered view after going through the various judgments cited at the Bar, that this Court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular / wrong fixation of pay be recovered."

(iii) 2014(8) SCC 883, the relevant para 2 reads as follows:-

"2.The issue in this matter pertains to the recovery of excess money from the pensionary benefit of the Respondent-White washer, on account of a wrong fixation of pay by the petitioner No.4 - The executive Engineer. The Respondent approached the High Court by filing a Writ Petition. The quotation of law of consideration before the High Court was: whether the Government is entitled to recover from an employee any payment made in excess of what the employee is otherwise entitled to, in the absence of any fraud or misrepresentation on the part of the employee. The High Court relies on a Full Bench decision, and directed not to recover the excess amount from the Respondent."

(iv) 2009(3) STPL (LE) 41284 SC (Syed Abdul Qadir and others Vs. State of Bihar and others), para 53 reads as follows:-

"53.We now come to the question as to whether the amount that has been paid in excess to the appellants-teachers should be recovered or not. It is the submission of the learned counsel appearing on behalf of the appellants-teachers that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount that has been paid to the appellants cannot and should not be recovered; it having been paid without any misrepresentation or fraud on their part."

22. According to the petitioner, while he was working in Government Agricultural Engineering Workshop, Washermanpet, Chennai -21 all the 11 Turners Grade-I, retired on attaining age of superannuation and the first respondent requested the petitioner and others to work as Turner Grade-I and he was discharging the duty as Turner Grade-I. That is the reason why, the first respondent by his letter dated 26.09.2002 directed the second respondent to fix the petitioner's pay as Turner Grade-I, as per G.O.Ms.No.446 dated 31.08.1998.

23. Based on the said letter, the second respondent by his proceedings No.558/01 dated 31.10.2002 fixed the salary of the petitioner as Turner Grade-I. In the counter affidavit the respondents have stated that the petitioner was never promoted as Turner Grade-I and no Government order has passed in this regard. It is not the case of the petitioner that he was promoted as Turner Grade-I. On the other hand, petitioner's specific case is on superannuation of all the 11 Turners Grade-I, the petitioner and others were directed to discharge the duties of Turner Grade-I. This contention of the petitioner has considerable force and is supported by letter of the first respondent dated 26.09.2002 bearing Ref.No.9/2002 and consequential fixation of pay by the second respondent, by the proceedings dated 31.10.2002 in proceedings No.A.588/01.

24. Having extracted work from the petitioner as Turner Grade-I, even though, no formal promotional order was issued, the respondents cannot downgrade the salary of the petitioner.

25. For the reasons stated above, the impugned orders of the respondents are not valid and liable to be set aside."

5. The learned Government Advocate appearing on behalf of the respondents also submits that the issues involved in the present writ petition are squarely covered by the decision of this Court in W.P.(MD).No.1223 of 2012 dated 15.04.2015.

6. Since, the learned counsel for the petitioner as well as the learned counsel for the respondents made a submission that the issues are covered by the order of this Court cited supra, this Court is of an opinion that the writ petitioner is also entitled for relief as sought for in the present writ petition.

7. Accordingly, the impugned order passed by the 2nd respondent in Letter No.E/1781/2010 dated 17.08.2010 is quashed and the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mbi/kak
To

1.The Chief Engineer,
Agricultural Engineering Department,
Anna Salai, Nandanam,
Chennai - 600 035.

2.The Assistant Executive Engineer (AE),
Agricultural Engineering Department,
Cuddalore 607 002.

+ 1 ccto Mr. KM. Ramesh, Advocate SR.65170
+ 1 cc to Government Pleader Sr.65525

RSK(CO)
EU(23/10/2018)

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