IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.09.2018

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19624 of 2008
and
M.P.Nos.1 and 2 of 2008

R.Venkatesan .. Petitioner

vs

1.The Deputy Chief Internal Audit Officer,
Board Office Audit Branch,
144, Anna Salai, Chennai-2.

2.The Deputy chief Internal Audit Officer,
Tamil Nadu Electricity Board,
Board Office Audit Branch,
Villupuram - 625 602.

3.The Superintending Engineer,
Tiruvannamalai Electricity Distribution Circle,
Tiruvannamalai. .. Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus to call for the records on the file 1st respondent in Proc. No.D.O.Letter No.09966/P.142/BOAB/Pension/F.93/2008, dated 22.03.2008 and to quash the same as illegal, incompetent and without jurisdiction and to direct the respondents to pay the recovered amount to the extent of Rs.73,806/- along with the interest at 24%.

For petitioner : Mr.Sarath Chandar for Mr.V.Ragavachari

For respondents : Mr.P.R.Dhilip Kumar for R2 & R2
No appearance for R1

O R D E R

This Writ Petition has been filed to call for the records of the 1st respondent in Proc. No.D.O.Letter No.09966 / P.142/BPAB/Pension/ F.93/2008, dated 22.03.2008 and to quash the same as illegal, incompetent and without jurisdiction and to direct the respondents to pay the recovered amount to the extent of Rs.73,806/- along with the interest at 24%.

2.The petitioner was appointed as Bill Collector in the service of the third respondent/Electricity Board. The petitioner's scale of pay revised during the existing period.

3.The petitioner attained the age of superannuation on 31.01.2008. After his retirement at the time of settlement, by a letter dated 03.07.2008 a sum of Rs.73,806/- was deducted. This deduction was on account of excess payment from the arrears authorized and pension admitted from 2007-2008 promptly. The copy of the said letter filed along with this typed set of papers, which has been enclosed in page 21. The content of the letter reads as under:

Lr.No.SET/Adm.2/A.3/F.01-08/2008, dated 04.06.2008.

Sub: Establishment-Class III services - Thiru.P.Venkatesan, Assessment Officer/West/ T'Malari retired on 31.01.2008 AN Revised Sanction for pension, DCRG and communication of pension with pension Proposal - forwarded - Regarding.

Ref:1.Pro.No.Adm.2/A.3/F.01-08/08, dt.20.02.08.
2.DCIAO Lr.No.09966F.142/BOAB/Pension/ F.9/F.93/2008 dt.22.03.2008.

With reference to the letter under reference (2) cited above the sanction already accorded vide reference (1) cited to Thiru.P.Venkatesan, Assessment Officer/West/Thiruvannamalai retired on 31.01.2008 An is now revised and the revised sanction copies of pension, DCRG, communication is enclosed herewith. The excess pay and allowances paid from 01.12.1992 to 31.01.2008 with encashment of EL for 240 days is works out to a sum of Rs.73,806/- and furnished in the enclosed statement for making necessary recovery at your end. The service Book the above individual with pension proposal is forwarded herewith for favour further action.

4.The recovery was for the period between 01.12.1992 to 31.01.2008 with encashment of EL for 240 days.

5.It is the case of the petitioner that as the recoveries cannot be made without any notice. In any event, such recovery cannot be effect if an employee retired from service.

6.The learned counsel for the petitioner relied on the decision in Bhagwan Shukla Vs. Union of India and others (1994) 6 SCC 154.

7.The learned counsel for the petitioner submits that pay scale was fixed incorrectly in the Selection Grade Post of Revenue Supervisor in the higher time scale of pay (8100-275-15525) instead of in the time scale of pay (5850-200-11050) and the pay fixed in the Selection Grade Post of Inspector of Assessment has also to be revised with effect from 01.12.1992 as shown in the Annexure.

8.The impact of recovery was made vide recovery bill dated 03.07.2008. While dealing with the similar issue of reduction to the pay the Hon'ble Supreme Court in Bhagwan Shukla Vs. Union of India and others (1994) 6 SCC 154 held that reduction in pay scale without hearing was in violation of the principle of natural justice.

9.The learned counsel for the respondents reiterated the content of the counter filed by them. According to the respondents, audit objection raised vide audit slip dated 10.10.2007, was dropped vide Letter No.001021 dated 22.01.2008. Thereafter, the petitioner reached the date of superannuation on 31.01.2008. The sanction for pensionary benefits was accorded by Superintending Engineer, Thiruvannamalai. However, it was returned vide Audit Branch D.O. Lr.No. 09966/ P.142/BOAB/Pension/F.93/2008, dated 22.03.2008 due to incorrect pay fixation from 01.12.1992 to 31.01.2008. Thereupon, as per workings of Superintending Engineer, Thiruvannamalai, the excess pay and allowances of Rs.73,806/- was deducted from the arrears authorized and pension was admitted from 2007-2008 promptly.

10.In view of the decision of the Hon'ble Supreme Court in Bhagwan Shukla case supra, the impugned order seeking to revise pay scale of the petitioner retrospectively with effect from 01.12.1992 is set aside. Consequently, the 1st respondent is directed to pass an appropriate order after issuing of show cause notice to the petitioner as per the applicable rules and following the principle of natural justice.

11.The above writ petition is allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Internal Audit Officer
144, Annasalai, Chennai-2.

2.The Deputy Chief internal audit officer
TNEB - Villupuram-625602.

3.The Superintending Engineering,
Tiruvannamalai Electricity Distribution,
Tiruvannamalai.

+1cc to Mr.P.R.Dhilipkumar, Advocate, S.R.No.63639

W.P.No.19624 of 2008

rrs 11/10/2018