

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.34357 of 2016

P.Subbraayalu

.. Petitioner

-vs-

1. The Director of Local Fund Audit
IV Floor, Kuralagam
Chennai 600 108
2. The Director of Municipal Administration
Ezhilagam, Chepauk
Chennai 600 005
3. The Municipal Engineer/Commissioner
Tiruchengode Municipality
Tiruchengode, Namakkal
Namakkal District
4. The Assistant Director
Municipal Pension Verification
Local Fund Audit, 4th Floor
Kuralagam
Chennai 600 108

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the entire records of the fourth respondent passed in communication in Mu.Mu.No.40366 NOS(2)/2015 dated 22.06.2016 and quash the same and consequently directing the respondents 1 to 4 herein to pay the arrears in respect of the petitioner's pensionary benefits including revised pensionary benefits from 30.11.1994 viz., date of retirement to till date due process of law.

For Petitioner :: Mr.R.Muralidharan

For Respondents :: Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R1, 2 & 4
No appearance for R3

ORDER

This writ petition is directed against the impugned order dated 22.6.2016 issued by the Assistant Director, Municipal Pension Verification, Local Fund Audit, Chennai, the fourth respondent herein, wherein it is stated that the petitioner is not entitled to get the benefit of FR 22-B, hence, the pension calculated on the basis of his last drawn pay at Rs.2,450/- is correct, inasmuch as the scale of pay of the Selection Grade Sanitary Inspector was identical to the scale of pay in the promotional post of Sanitary Officer (Ordinary Grade).

2. Assailing the said approach, the learned counsel for the petitioner submitted that the petitioner worked as Sanitary Officer under the Director of Public Health and his services were also regularized with effect from 1.1.76, as per the proceedings dated 2.5.75 passed by the Assistant Director of Public Health and Preventive Medicine (Nutrition), Madras. It is his further claim that the Government also has granted increment to him as per G.O.Ms.No.1363 dated 7.10.72. Finally, the petitioner retired from service on attaining the age of superannuation with effect from 30.11.94. After his retirement, on the basis of an audit objection that the scale of pay of Selection Grade Sanitary Inspector being identical to the scale of pay of the promotional post of Sanitary Officer (Ordinary Grade) and that immediately after his promotion, he had not exercised his option, an order came to be passed on 13.7.99 holding that he cannot be given the benefit of FR 22-B. Subsequently, the said order was also confirmed by the first respondent in proceedings O.Mu.No.48308/NOS(2)/2009 dated 8.5.10. Aggrieved thereby, the petitioner filed Writ Petition No.18488 of 2010 before this Court to quash the proceedings referred to above. This Court, considering the fact that the refixation of pay was sought to be done after four years of his retirement and also that the petitioner was not responsible for the wrong fixation of pay, allowed the writ petition holding that it was improper on the part of the first respondent to pass orders refixing the pay that too, after his retirement and directed the refund of the excess amount to the petitioner. Secondly, it was also held there was no notice was issued to the petitioner before refixing his scale of pay and recovering the excess from him. While so, the Commissioner, Tiruchengode Municipality, the third respondent herein, by his proceedings dated 17.3.15 addressed to the Director of Local Fund Audit, the first respondent herein, marking a copy to the petitioner, re-submitted the proposal to the first respondent by fixing his last drawn pay at Rs.2,600/-, because there was no finding given in the order dated 12.9.12 in W.P.No.18488 of 2010 with regard to the fixation of his salary viz., Rs.2,600/- or Rs.2,450/-.

However, it was pleaded that the first respondent has committed an error by calculating the pensionary benefits on the basis of the last drawn pay at Rs.2,450/-, instead of at Rs.2,600/-. Although the petitioner had sent representations on 10.8.2013, 9.12.2015 and 30.4.2016 to the first respondent indicating that the petitioner is aged 81 years and his pensionary benefits should be disbursed without any reduction, for which the third respondent also sent his communication to the first respondent to consider his representations, the Assistant Director of Municipal Pension Verification, Local Fund Audit, the fourth respondent herein by the impugned communication in Mu.Mu.No.40366/NOS(2)/2015 dated 22.6.2016 rejected the petitioner's case holding that the pension calculated on the basis of his last drawn pay at Rs.2,450/- is correct, inasmuch as the scale of pay of the Selection Grade Sanitary Inspector was identical to the scale of pay of the promotional post of Sanitary Officer (Ordinary Grade), which is absolutely unacceptable, he pleaded.

3. A detailed counter affidavit has been filed by the respondents 1 & 4. The learned Special Government Pleader for the respondents 1, 2 & 4 submitted that the petitioner retired as Sanitary Officer from Tiruchengode Municipality on 30.11.94. However, there was an audit objection by the Local Fund Audit department in respect of his pay fixation indicating that scale of pay of the Selection Grade Sanitary Inspector was identical to the scale of pay of the promotional post of Sanitary Officer (Ordinary Grade), therefore, FR 22-B cannot be applied, for the reason that he did not even exercise his option at the time of his promotion to the post of Sanitary Officer (Ordinary Grade) from the post Selection Grade Sanitary Inspector. In view of the serious legal objection raised by the audit department, while the petitioner was working in Tindivanam Municipality, citing wrong fixation of pay of Rs.2,600/-, his pension was revised taking his last drawn salary at Rs.2,450/- at the time of his retirement on 30.11.94 and that the excess pay and allowances paid to him due to such wrong fixation amounting to Rs.24,730/- were also recovered from his pensionary benefits and thereafter sent to Tindivanam Municipality. Aggrieved by the same, the petitioner filed W.P.No.18488 of 2010. The learned Special Government Pleader further submitted that this Court considering three aspects that there was no notice issued before ordering the refixation/recovery of the excess amount, that the recovery has been made four years after his retirement and that there was no misrepresentation or fault on the part of the petitioner, allowed the said writ petition citing the reason that the refixation of his pay and the consequent recovery cannot be sustained. Therefore, as per the order passed by this Court on 12.9.2012, the recovered amount was refunded to the petitioner on 18.12.2012 vide cheque No.901707 by the Commissioner,

Tindivanam Municipality.

4. Adding further, the learned Special Government Pleader for the respondents 1, 2 & 4 submitted that now the question is whether the pay of the petitioner is to be fixed at Rs.2,600/- or Rs.2,450/- for the purpose of pension. When the petitioner was promoted as Sanitary Officer (Ordinary Grade) from the post of Selection Grade Sanitary Inspector, as the scale of pay being identical to each other, the petitioner should have exercised his option within a month from the date of such promotion. But he has not done so admittedly. Since FR 22-B cannot be applied, the audit department raised an objection stating that due to wrong fixation of pay, his pay should be reduced from Rs.2,600/- to Rs.2,450/- and consequently his pension also should be reduced. The petitioner had never canvassed before this Court in W.P.No.18488 of 2010 that he exercised his option within the stipulated time. Moreover, when there was no order at any point of time fixing his pay at Rs.2,600/-, as the scale of pay at Rs.2,450/- was rightly fixed, consequently, his pension also was fixed on the basis of the said last drawn salary at the time of retirement on 30.11.94. Therefore, the impugned order is perfectly in order, he pleaded.

5. I find merits in the submissions made by the learned Special Government Pleader for the respondents 1, 2 & 4. When the petitioner retired as Sanitary Officer from Tiruchengode Municipality on 30.11.94, four years thereafter, on the basis of an audit objection that the scale of pay of the Selection Grade Sanitary Inspector being identical to the scale of pay of the promotional post of Sanitary Officer (Ordinary Grade), the petitioner failed to exercise his option, hence, FR 22-B cannot be applied, the department came to the conclusion that a wrong fixation of pay has been made at Rs.2,600/- instead of at Rs.2,450/-. Therefore, his pay was reduced from Rs.2,600/- to Rs.2,450/- and the excess amount was directed to be recovered. But this Court, by its order dated 12.9.2012, on three grounds, namely, (a) that no prior notice was given; (b) that there was no misrepresentation or false representation on the part of the petitioner and (c) that long after his retirement pay was sought to be refixed, allowed the writ petition with a direction to refund the excess pay recovered from the petitioner. As per the said order, a sum of Rs.24,730/- was refunded to the petitioner on 18.12.2012 vide cheque No.901707 dated 18.12.2012 by the Commissioner, Tindivanam Municipality. However, the department was not prevented from refixing his pay, as FR 22-B cannot be applied, because he had not exercised his option at the time of his promotion to the post of Sanitary Officer within the stipulated period. In deference to the order passed by this Court, the respondents 1 & 4 refunded the amount to the petitioner. Subsequently, on the basis of the audit objection,

fixation of wrong pay at Rs.2,600/- was reduced to Rs.2,450/- taking a ground that the FR 22-B ruling (8) cannot be made applicable to the petitioner's case. The relevant ruling is given as under:-

"Ruling (8) of 22-B. When a Government servant is promoted/appointed to a higher post from Selection Grade of the lower post carrying identical scale of pay as the ordinary grade of such higher post, the pay of the Government servant shall be fixed either under rule 22-B with reference to the notional pay in the ordinary grade of the lower post on the date of promotion/appointment to the higher post with 5% increase of pay with reference to such notional pay or at the stage in the ordinary grade of the higher post after adding one notional increment to the pay drawn in the Selection Grade scale of the lower post at his option. The option shall be exercised within one month from the date of promotion/appointment, and, if no option is exercised within the period the pay of the Government servant shall be fixed at the stage in the ordinary grade of the higher post equal to the pay after adding one notional increment to the pay drawn in the Selection Grade scale of the lower post."

6. When the petitioner's scale of pay in the higher promotional post from the selection grade scale of the lower post is one and the same, within one month from the date of promotion, he should have exercised his option. In the present case, the petitioner has not pleaded anywhere or argued before this Court that he had exercised his option. Therefore, the pay of the government servant at the stage in the ordinary grade of the higher post equal to the pay after adding one notional increment to the pay drawn in the selection grade scale of the lower post, cannot be found fault with, because the petitioner had not exercised his option for 5% increase of pay as per FR 22-B within one month from the date of his promotion. When the petitioner has not exercised his option, his pay has been rightly fixed, as stated in paragraph-5 of the counter affidavit, in the following manner:-

Wrong fixation of pay done earlier	Correct fixation of pay pointed out in audit
01.01.1975 - Rs.455/- Rs.350-15-500-20-600 Selection Grade Sanitary Inspector	01.01.1975 - Rs.455/- Rs.350-15-500-20-600 Selection Grade Sanitary Inspector
01.01.1976 - Rs.470/- (increment)	01.01.1976 - Rs.470/-
01.07.1976 - Rs.500/- Rs.350-15-500-20-600 Promoted as Sanitary Officer (Identical scale)	01.07.1976 - Rs.470/- (Sanitary Officer) Note: As per the Tamil Nadu Municipal Public Health Service Regulations 1970, both Sanitary Officer (Category 1) and Selection Grade Sanitary Inspector (Category 2) come under class II. Hence no 5% increase of pay was granted and pay was fixed at Rs.470/- as per the audit report. No option was given by the petitioner.
01.07.1977 - Rs.520/- (increment)	01.01.1977 - Rs.485/- 01.01.1978 - Rs.500/-
01.04.1978 - Rs.735/- Rs.525-25-675-30-855-35 3 rd Pay Commission	01.04.1978 - Rs.705/- Rs.525-25-675-30-855-35 3 rd Pay Commission
01.07.1978 - Rs.765/-	
01.07.1979 - Rs.795/-	01.01.1979 - Rs.735/-
01.07.1980 - Rs.825/-	01.01.1980 - Rs.765/-
01.07.1981 - Rs.855/-	01.01.1981 - Rs.795/-
01.07.1982 - Rs.890/-	01.01.1982 - Rs.825/-
01.07.1983 - Rs.925/-	01.01.1983 - Rs.855/-
01.07.1984 - Rs.960/-	01.01.1984 - Rs.890/-
01.10.1984 - Rs.1495/- Rs.905-45-1445-50-1545 4 th Pay Commission	01.10.1984 - Rs.1400/- Rs.905-45-1445-50-1545 4 th Pay Commission
01.07.1985 - Rs.1545/-	01.01.1985 - Rs.1445/-

Wrong fixation of pay done earlier	Correct fixation of pay pointed out in audit
01.07.1986 - Rs.1645/- + 15 PP Rs.1045-45-1450-65-1775 Selection Grade Sanitary Officer	01.01.1986 - Rs.1495/-
01.07.1987 - Rs.1710/- + 15 PP	01.07.1986 - Rs.1515/- + 30 PP Rs.1045-45-1450-65-1775 Selection Grade Sanitary Officer
01.06.1988 - Rs.2120 Rs.2000-60-2300-75-3200 Selection Grade Sanitary Officer	01.01.1987 - Rs.1580+30 PP
01.07.1988 - Rs.2180/-	01.01.1988 - Rs.1645+30 PP 01.06.1988 - Rs.2060 Rs.2000-60-2300-75-3200 Selection Grade Sanitary Officer
01.07.1989 - Rs.2240/-	01.01.1989 - Rs.2120/-
01.07.1990 - Rs.2300/-	01.01.1990 - Rs.2180/-
01.07.1991 - Rs.2375/-	01.01.1991 - Rs.2240/-
01.07.1992 - Rs.2450/-	01.01.1992 - Rs.2300/-
01.07.1993 - Rs.2525/-	01.01.1993 - Rs.2375/-
01.07.1994 - Rs.2600/- (Retired on 30.11.1994)	01.01.1994 - Rs.2450/- (Retired on 30.11.1994)

Therefore, this Court finds no infirmity with the impugned order. Accordingly, the writ petition fails and it is dismissed. No costs.

सत्यमेव जयते
Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

1. The Director of Local Fund Audit
IV Floor, Kuralagam
Chennai 600 108
2. The Director of Municipal Administration
Ezhilagam, Chepauk
Chennai 600 005
3. The Municipal Engineer/Commissioner
Tiruchengode Municipality
Tiruchengode, Namakkal
Namakkal District
4. The Assistant Director
Municipal Pension Verification
Local Fund Audit, 4th Floor
Kuralagam
Chennai 600 108

+1cc to Mr.R.MURALIDHARAN, Advocate, S.R.No.525
+1cc to Mr.P.SRINIVAS, Advocate, S.R.No. 878
+1cc to the Government Pleader, S.R.No. 3414

W.P.No.34357 of 2016

AK(CO)
TR(07/02/2018)

सत्यमेव जयते

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