IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.09.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P.No.33360 of 2004
and
WP.MP.Nos.40313 and 40314 of 2004

K.Neethiraj .. Petitioner

Vs

1.The Secretary,
Higher Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Director,
Technical Education,
Guindy, Chennai - 600 025.

3.The Principal,
Virudhunagar S.Vellaichamy Nadar
Polytechnic College, (Autonomous),
Virudhunagar - 626 001. .. Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus calling for the records relating to the letter No.7271/C1/2003-5, dated 06.04.2004 on the file of the first respondent, to quash the same and to direct the respondents to consider the proposals dated 22.05.2001 sent by the third respondent to the second respondent for the purpose of revising the scale of pay on the basis that the petitioner had put in five years 10 months and 20 days service in the third respondent institution as its Head of Department as on 01.01.1996 and revise the scale of pension accordingly within a stipulated time.

For Petitioner : Mr.S.Subbiah
Senior Counsel
for Ms.D.Sathya Sri

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader
for Respondents 1 and 2

No appearance
for 3rd respondent

O R D E R

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the letter No.7271/C1/2003-5, dated 06.04.2004 on the file of the first respondent, to quash the same and to direct the respondents to consider the proposals dated 22.05.2001 sent by the third respondent to the second respondent for the purpose of revising the scale of pay on the basis that the petitioner had put in five years 10 months and 20 days service in the third respondent institution as its Head of Department as on 01.01.1996 and revise the scale of pension accordingly within a stipulated time.

2. The facts in a nutshell are as under: The petitioner joined in the service of the third respondent on 04.07.1961 and after serving for 36 years 9 months and 28 days, on attaining the age of superannuation, he retired on 30.04.1998.

3. It is the case of the petitioner that during his employment the petitioner was appointed as Superintendent of Workshop and was later promoted as Head of the Department, with effect from 19.11.1987, temporarily and was subsequently reverted on 01.07.1988 for want of vacancy, but he was permanently promoted as Head of Department with effect from 01.03.1989. According to the petitioner, he served as Head of Department for 5 years 10 months and 20 days.

4. It is stated that the scale of pay of the petitioner was re-fixed treating his total year of service as the Head of Department as more than five years and, accordingly, he was paid salary for the period pertaining from 01.01.1996 to 30.04.1998. The said payment at the revised scale was also approved by the first respondent. It is the case of the petitioner that when his scale of pay was revised and fixed as per the letter dated 11.11.1999, the pension amount should also be automatically revised.

5. It is averred that a revised pension proposal based upon the clarification dated 11.11.1999 was sent by the third respondent to the second respondent on 22.05.2001, but the second respondent, by proceedings dated 06.06.2002 addressed to the third respondent, observed that the petitioner's eligibility to draw the revised scale of pay starts from 19.09.1996 alone, as the petitioner should have been in continuous service as Head of Department for a period not less than five years and in the case on hand, there is break in service rendered by the petitioner as Head of Department.

6. It is further stated that when the clarification dated 11.11.1999 only contemplates that five years of service in the Grade and does not specify continuous service of five years, the respondents cannot state that there was break in service and, therefore, the petitioner is not eligible for such benefit.

7. It is also stated that though the third respondent sent a further clarification to the second respondent, the second respondent reiterated his stand and third respondent by letter dated 23.10.2002 called upon the petitioner to pay a sum of Rs.30,728/-. Feeling aggrieved, the petitioner sent a representation to the first respondent during February, 2003. However, the first respondent by letter dated 06.04.2004 sustained the stand taken by the second respondent. Thereafter, by proceedings dated 16.04.2004, the second respondent directed the third respondent to recover the alleged excess payment and then send revised proposals for payment of pension. It is stated that the third respondent had directed the petitioner to remit a sum of Rs.30,728/- as a condition precedent for the purpose of sending revised pension payment.

8. In such premise, the present writ petition is filed for the relief stated supra.

9. The learned Senior Counsel appearing on behalf of the petitioner submitted that the stand of the respondents that the petitioner had not served as Head of Department for continuous period of fiver years and, therefore, he is not entitled to get the benefit is totally illegal and runs counter to the clarification dated 11.11.1999, inasmuch as the clarification dated 11.11.1999 does not say anything regarding the putting in five years of continuous service.

10. It is further contended that pursuant to the clarification dated 11.11.1999, when the second respondent had sanctioned the payment of pay at revised scale and also directed to release the differential payment and the same was, in fact, paid to the petitioner, it is not known as to why the same yardstick is not being adopted for fixation of pension.

11. In any event, it is submitted that when scale of pay had been rightly fixed, there cannot be any revision of pay without notice to the petitioner or calling for his objections, in due compliance of the principles of natural justice.

12. Per contra, the learned Special Government Pleader appearing on behalf of respondents 1 and 2 submitted that the clarification dated 11.11.1999 was issued after retirement of the petitioner on 30.04.1998 and, therefore, the original pension was sanctioned in the pre-revised scale of pay and the

cause of revision of pension arose based on the clarification dated 11.11.1999 with retrospective effect from 01.01.1996 and that apart, broken spells of service rendered by the petitioner at Head of Department cannot be counted for getting the higher pay in the post of Head of Department. He added that unless there is a specific order, the broken spells of service cannot be counted for upgradation.

13. I heard Mr.S.Subbiah, learned senior counsel for Ms.D.Sathya Sri, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 and 2 and perused the documents available on record. No representation on behalf of the 3rd respondent.

14. At the outset, it is to be noted that at the time of admission of this writ petition, an order of interim stay was granted on 19.11.2004 and the subsists even as on date and no steps have been taken by the respondent authorities to vacate the same even after expiry of 13 years.

15. Before adverting to the merits of the case, it is apposite to the relevant portion of Letter No.8745/C2/99-5, dated 11.11.1999 issued by the Secretary to Government Higher Education Department, which reads as under:

> "3. In order to safeguard the interest of the senior teachers and also to maintain parity in all respects between Head of Department (Special Temporary, Upgraded, Regular) in Polytechnics and Special Diploma Institutions and Assistant Professors in Engineering Colleges, the Director of Technical Education has recommended that the benefit of higher start at Rs.14,940/- granted to the Assistant Professors in Engineering Colleges with five years of service in the revised scale of pay of Rs.12000-420-18300 might be extended to the Head of Department (Special Temporary, Upgraded, Regular) in Polytechnics/Special Diploma Institutions (Government and Government-Aided) with five years of experience.
>
> 4. The Government after careful consideration clarify that the fixation of pay of Heads of Department (Special Temporary, Upgraded, Regular) in Polytechnics and Special Diploma Institutions (Government and Government-Aided) in the pre-revised pay scale of Rs.3700-125-4950-150-5700 who were in position as Heads of Department (Special Temporary, Upgraded, Regular) as on 1.1.1996 will be made in a manner that they get their pay fixed at the minimum of Rs.14,940/- in the revised scale of Rs.12000-420-18300 as and when they complete 5

years service in the grade."

16. It is beyond any cavil that the above said letter, which is in the nature of clarification, governs the service rendered by the petitioner and covers all cases were the person concerned was in the position of Head of Department (Special Temporary, Upgraded, Regular) as on 01.01.1996. Admittedly, the petitioner retired on attaining the age of superannuation on 30.04.1998. Therefore, as on 01.01.1996, the petitioner was very much in service.

17. Let us now analyze the length of service rendered by the petitioner in the cadre of Head of Department. It is the case of the petitioner that he had rendered service of 5 years 10 months and 20 days as Head of Department and the above said clarification letter dated 11.11.1999 is squarely applicable to his case. The respondents also do not dispute the period of service rendered by the petitioner. All that the respondents plead is that the petitioner had not rendered continuous service of five years and he is therefore not entitled to the benefit of the said clarification letter.

18. A bare perusal of the above said letter dated 11.11.1999 clearly stated that the employee will be entitled to get his pay fixed in the revised scale as and whey they complete five year service in the grade of Head of Department. The word "continuous service" as being interpreted by the respondent authorities is admittedly absent. Nowhere, the above said letter contemplates that the employee should have worked continuously for five years in the cadre of Head of Department. It is based on such interpretation, which in the considered opinion of this Court is right, that the respondents fixed the revised pay of the petitioner in the light of the above said letter dated 11.11.1999. Therefore, it does not lie in the mouth of the respondent authorities to state that for pension the same proposition is not applicable.

19. It is seen that only at the stage of sending revised pension proposal that the respondent authorities sought to give a new interpretation that the service of five years should be continuous, which was not the case of the respondent authorities till then. This Court finds no justification in the said interpretation being made by the respondent authorities.

20. Qua the recovery proposed to be made by the respondent authorities from the petitioner as a condition precedent for sending the revised pension proposal, it is to be note that before such recovery order is passed no opportunity of hearing was given to the petitioner. That apart, it is not the case of the respondent authorities that the petitioner had played fraud

or misrepresented and got his pay fixed at the higher scale.

21. In Shyam Babu Verma v. Union of India, (1994) 2 SCC 521, the Hon'ble Supreme Court held as under:

> "11.Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that the scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

22. In Rajasthan State Road Transport Corporation and another Vs. Bal Mukund Bairwa (2), (2009) 4 SCC 299, the Hon'ble Supreme Court observed as under:

> "35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity."

23. The aforesaid decisions are squarely apply to the case on hand. This Court as well as Hon'ble Supreme Court in a catena of decisions, time and again reiterated that no recovery of excess payment for no fault of the employee can be made without following the principles of natural justice.

24. No prejudice need be proved by enforcing the fundamental rights. Violation of fundamental right itself renders the impugned action void. So also the violation of natural justice renders the act of nullity. The purpose of the principles of natural justice is prevention of miscarriage of justice.

25. In a decision in Divisional Superintendent, Eastern Railway, Dinapur and others vs. L. N. Kashri and others, A.I.R. 1974 SC 1889, the Hon'ble Supreme Court held thus:

> "The appellants, having fixed the scale and confirmed the respondents, could not reduce the scale without giving any opportunity to the respondents to be heard. Further more, the respondents on confirmation became entitled to rights to the post and to the scale of pay fixed by

the Board."

The said decision is applicable in all fours to the case on hand.

26. It is pertinent to point out that in the case on hand, the petitioner was awarded the revised pay as per the clarification letter dated 11.11.1999. The respondent authorities, having fixed the revised scale of pay, cannot reduce the scale without giving any opportunity to the petitioner. Further, reduction of pay and recovery of pay, if any, without hearing the petitioner is illegal.

27. Nothing has been produced to show that on the misrepresentation of the petitioner, the benefit of higher pay scale was given to him. Under the circumstances, there is no justification in passing the impugned order and the same is liable to be set aside.

28. In the light of the above, the writ petition is allowed and the letter No.7271/C1/2003-5, dated 06.04.2004 of the first respondent is set aside and the respondents to consider the proposals dated 22.05.2001 sent by the third respondent to the second respondent for the purpose of revising the scale of pay on the basis that the petitioner had put in five years 10 months and 20 days service in the third respondent institution as its Head of Department as on 01.01.1996 and revise the scale of pension within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

vs

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Higher Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Director,
Technical Education,
Guindy, Chennai - 600 025.

+1cc to Mr.Raja, Advocate SR.NO.63111

MG(CO)
sm:16.10.2018

W.P.No.33360 of 2004
and
WP.MP.Nos.40313 and 40314 of 2004