



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.14203 of 2011

and

M.P(MD) Nos.1 & 2 of 2011

G.Radhakrishnan

... Petitioner

-vs-

1.The Principal Secretary to Government,
Personnel and Administrative Reforms(S) Department,
Government of Tamil Nadu,
Secretariat,
Chennai-600 009.

2.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order bearing No.100/QUA.1 /2011, dated 01.11.2011 issued by the second respondent read with the Government letter bearing No.23373/S/2011-2, dated 09.08.2011 issued by the first respondent and quash the same.

For Petitioner : Mr.B.Prasanna Vinoth
For R1 & R2 : Mr.M.Muthu,
Additional Government Pleader

O R D E R

The relief sought for in this writ petition is to call for the records in relation to the impugned order passed by the second respondent vide proceedings, dated 01.11.2011, which was issued based on the Government Letter, dated 09.08.2011 and quash the same.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner was appointed as Warder Grade II in the year 1984 and promoted as Warder Grade-I in June 2010. The petitioner has completed 27 years of service at the time of filing of the writ petition. His pay was fixed in the selection Grade post based on the Government Orders in force. However, the respondents issued the impugned order of reduction of pay and recovery vide proceedings, dated 01.11.2011 stating that the scale of pay was erroneously fixed in respect of the writ petitioner.

3.The learned counsel for the petitioner states that the impugned order was passed reducing the scale of pay and recovery



without giving any show cause notice and opportunity to the writ petitioner and therefore, the same is in violation of principles of natural justice.

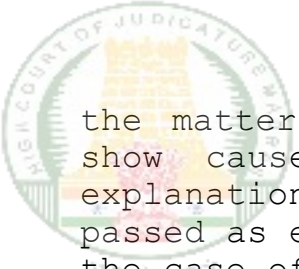
4. The learned Additional Government Pleader appearing on behalf of the respondents states that the error found in respect of fixation of pay is sought to be corrected and therefore, there is no infirmity. Further, it is stated that the fixation of pay was erroneously done in the case of the writ petitioner and therefore, the authorities competent has issued orders correcting the same and correction of errors are permissible in the accordance with the Rules.

5. The learned counsel for the petitioner states that the re-fixation and reduction of pay and recovery was issued based on the Government Letter. Further, the initial fixation of pay was done with reference to the Government Orders issued in G.O.Ms.No.311, dated 26.08.2010 and G.O.No.67, dated 26.02.2011. When the re-fixation of pay was granted pursuant to the Government Orders passed, the reduction of pay and recovery cannot be imposed based on the Government letter. The learned counsel for the petitioner further states that the Government letter cannot supersede the Government Orders and the Government Order will prevail over and therefore, the impugned order passed with reference to the Government Letter cannot be sustained.

6. May that it be, this Court is of an opinion that the order impugned reducing the scale of pay and recovery was imposed without any show cause notice and opportunity. This apart, even if there is any correction while fixing the scale, even as per the G.O.Ms.No.311 and G.O.Ms.No.67, the authorities competent are empowered to correct the scale of pay, and also to correct the mistake, if any, occurred at the time of fixation. In other words, the correction of mistakes, and fixation of pay is permissible. However, the recovery cannot be imposed in view of the fact that there was no misrepresentation or otherwise on the part of the writ petitioner. Further, the writ petitioner is working as a Warder Grade I, which belongs to Class-III and therefore, the recovery is certainly impermissible.

7. In these circumstances, the authorities competent are at liberty to correct the scale of pay in respect of fixation and re-fixation. However, the recovery cannot be effected. Even for the purpose of undertaking the process of re-fixation of pay, show cause notice is to be issued to the writ petitioner and on receipt of any explanations/objections from the petitioner, the decision is to be taken in accordance with the Government Orders in force and pass final orders.

8. In these view of the matter, the impugned order passed by the second respondent vide proceedings No.100/ngh.1 /2011, dated 01.11.2011 is quashed as far as the writ petitioner is concerned and



the matter is remitted back to the second respondent for issuing show cause notice to the writ petitioner and on receipt of explanation/objections from the petitioner, a final order is to be passed as early as possible. However, it is made clear that even in the case of re-fixation, no recovery can be imposed.

9. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
Personnel and Administrative Reforms(S) Department,
Government of Tamil Nadu,
Secretariat,
Chennai-600 009.

2.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.

+1cc to M/S.B.Prasanna Vinoth, Advocate SR.No. 45732
+1cc to Special Government Pleader, SR.No. 46123

W.P.(MD) No.14203 of 2011
01.02.2018

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JM/KK/SAR 2/21.02.2018/3P/5C