BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.5273 of 2011
and
M.P(MD)No.1 of 2011

V.Chandran ... Petitioner

vs.

1)PR.Accountant General,
(Accounts & Entitlements) Tamil Nadu,
361, Anna Salai, Chennai-2.

2)The District Judge cum Chief
Judicial Magistrate,
Nilgiris. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings in No.PEN/30/1/174/PLR cell/SCN/212266/JVD/10-11/3164 dated 11.4.2011 of the 1st respondent and quash the same.

For Petitioner	:	Mr.J.Anandkumar
For R1	:	Mr.P.Gunasekaran
For R2	:	Mr.D.Sivaraman

ORDER

The present writ petition has been filed for issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings in No.PEN/30/1/174/PLR cell/SCN/212266/JVD/10-11/3164 dated 11.4.2011 of the 1st respondent and quash the same.

2.Learned counsel for the petitioner would aver among other things that while the petitioner was working as Personal Assistant to the Hon'ble District Judge, Udagamandalam, in 2006, his pay was re-fixed as Rs.22,840/- Basic Pay and Grade Pay Rs.5,400/- as per pay commission with effect from 01.01.2007. On retirement, the pension papers of the petitioner were forwarded to the 1st respondent and pay arrears were scheduled to be released in three instalments. Accordingly, he received two instalments and was entitled to receive Rs.1,70,516/- towards 3rd instalment. At this juncture, the impugned notice dated 11.04.2011 was issued by the 1st respondent, stating that his pay wrongly fixed and therefore proposed to adjust the excess payment on the 3rd instalment of arrears of salary to be paid to the petitioner and if there are any arrears found to be due thereafter, the same to be recovered from dearness allowance of pension amount and sought for the reply of the petitioner, against which, the present writ petition has been filed.

3.The respondents through their counter affidavit would submit that the petitioner had retired while pre-revised scale of pay was in force. The Tamil Nadu Revised Pay Rules 2009 though took effect from 01.01.2006, notification in this regard was issued only in June 2009. Therefore, the petitioner had initially received his retirement benefits in the pre-revised scales of pay. The petitioner's pay as on 01.01.2006 was Rs.9,375/- in the scale of Rs.8000-275-13500. By an annual increment which fell on 01.04.2006 in respect of the petitioner, the pay had become Rs.9,650/-. Thus, the pay last drawn by the petitioner at the time of retirement was Rs.9,650/- and retirement benefits were calculated based on his last drawn pay of Rs.9,650/-. According to the respondents, there was no grievance raised by the petitioner when pensionary benefits were authorised for his last drawn pay of Rs.9,650/-

4.Learned counsel for the respondents further contended that rules were framed for the purpose of revised scale of pay and these rules were called as Tamil Nadu Revised Scales of Pay Rules 2009. As per Rule 4(1)(i), the pay in the Pay Band/Pay Scale shall be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiplier of 10. A new concept of Grade Pay introduced which is a fixed amount corresponding to the pre-revised pay scale/post. As per the Revised Rule 2(C) ''Basic Pay in the revised pay structure'' means the pay drawn in the prescribed pay band plus the applicable grade pay, but does not include any other type of pay like Special Pay. The revised pay scales shall take effect from 1.1.2006 and with monetary benefit from 1.1.2007 and the arrears were to be paid in 3rd instalment and the 1st respondent was directed to undertake the audit of the pay fixation and ensure correctness of pay fixation. If any erroneous fixation is noticed, downward revision of pension shall be made and the excess payment shall be adjusted before the last instalment of arrears to be paid. The error in fixation of pay was noticed by the 1st respondent office at the time of post audit of pay fixation undertaken with reference to instructions issued by the Government in Letter No.44880/Pay Cell/2009-1 dated 04.08.2009. Immediately, the 1st respondent had issued show cause notice to the petitioner in No.PEN/30/1/174/PLR CELL/SCN/212266/JUD/10-11/3164, dated 11.04.2011, informing him about the error in fixation and called for explanation from the petitioner and as the petitioner did not respond, only after satisfying with the records and following the principles of natural justice, the impugned order of recovery has been passed. The petitioner chose to challenge the show cause notice issued by the 1st respondent dated 11.04.2011 and therefore, the contention of the petitioner that he was not given opportunity before issuing recovery order does not arise. Also, the respondents would contend that the petitioner had given an undertaking that if any excess amount is paid, it can be recovered from him by way of instalments.

5.Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

6.Perusal of the impugned order shows that it is only a show cause notice in which the 1st respondent informed the petitioner about the wrong fixation of the petitioner's pensionary benefits and also called for explanation from the petitioner. Further, it is stated in the said notice that if no reply is received within three weeks from the date of receipt of that notice, recovery proceedings would be initiated without any further notice and the revised pension will be reported to the Treasury Officer with an instruction to adjust the excess paid pensionary benefits from the next instalments of arrears to be paid to the petitioner. Since the petitioner did not give any reply, the 3rd instalment of pension arrears has been withheld. In the case on hand, since the petitioner has also given an undertaking, recovery can be made from the 3rd instalment of arrears to be paid to the petitioner as per the judgment in High Court of Punjab & Haryana and others vs. Jagdev Singh reported in 2016 Writ L.R. 1030. Further, the judgment of the Hon'ble Supreme Court in State of Punjab and others etc vs. Rafiq Masih (White Washer) etc (Civil Appeal No.11527 of 2014, dated 18.12.2014), relied on by the petitioner is not applicable to the present circumstances of the case.

7.The grievance of the petitioner that no opportunity was given to him in my considered opinion has to be considered. As the petitioner is a retired employee and that there is an objection in arriving at the excess payment, ends of justice would be met if an opportunity is given to the petitioner to give his objection and considering his objection fresh order shall be passed by the respondents.

8.Accordingly, the impugned order in No.PEN/30/1/174/PLR cell/SCN/212266/JVD/10-11/3164 dated 11.4.2011 of the 1st respondent is set aside and the petitioner is directed to give his objection within a period of four weeks from the date of receipt of a copy of this order and after considering his objection, excess payment, if any, shall be recovered from the petitioner in the light of the judgment in State of Punjab and others etc vs. Rafiq Masih (White Washer) etc (Civil Appeal No.11527 of 2014, dated 18.12.2014).

With the above directions, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The District Judge cum Chief Judicial Magistrate,
Nilgiris.

+1cc to Mr.J.Anand Kumar, Advocate, Sr.No.85749.
+1cc to Mr.D.Sivaraman, Advocate, Sr.No.85803.
+1cc to Mr.P.Gunasekaran, Advocate, Sr.No.85578.

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