IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 18.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.28977 of 2008

R.Panneer Selvam ... Petitioner

Vs

1.The Director of Treasuries and Accounts,
Chennai - 600 015.

2.The Treasury Officer,
Cuddalore, Cuddalore District.

3.The Accountant General
(Accounts & Entitlements)
Tamil Nadu, Chennai - 600 018. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned order of the respondent in Na.Ka.No.7355/08/E1 dated 19.11.2008 and quash the same.

For Petitioner : Mr.P.Mohanraj

For R1 & R2 : Mr.N.Srinivasan
(Additional Government Pleader)

R3 : No appearance

ORDER

This writ petition is directed against the impugned proceedings dated 19.11.2008, of the second respondent / the Treasury Officer, Cuddalore, ordering to recover a sum of Rs.49,581/- in one lump sum from the petitioner's gratuity by re-fixing his scale of pay with effect from 01.01.1996.

2. The petitioner was originally appointed as Accountant in the Treasuries and Accounts Department, Government of Tamil Nadu, on 24.09.1975. The petitioner also promoted as Sub Treasury Officer on 24.04.1996. He further promoted as Assistant

Treasury Officer on 13.06.2003. After rendering 28 years of service, he retired from his services on 31.05.2008 on reaching the age of superannuation as Assistant Treasury Officer, Sub Treasury, Chidambaram.

3. In the meanwhile, the Treasury Officer, Cuddalore, through his proceedings No.18644/D1/2001, dated 07.11.2001, re-fixed the petitioner's pay in accordance with the clarification issued by the Government of Tamil Nadu in respect of fixation of pay of Government employees drawing 5% of personal pay in the pre-revised scale of pay. Since then, petitioner was drawing a pay of Rs.2,000/- till 01.01.1996 in the scale of Rs.1640-60-2600-75-2900. Accordingly, his personal pay was worked out to Rs.90/- by calculating 5% from his basic pay, likewise, his pay plus personal pay worked out to Rs.2,090/-(Rs.2000 + Rs.90), which was higher than Rs.2,060/-, which was a stage in the existing scale of Rs.1640-60-2600-75-2900. When the pay scale was revised with effect from 01.01.1996, the petitioner's pay also fixed at Rs.6550/- with effect from 01.01.1996 in the revised scale of pay of Rs.5500-175-9000/-. Subsequently, the petitioner was also promoted as Sub Treasury Officer with effect from 24.04.1996 and he was receiving a Special Grade Scale of Accountant namely, Rs.5500-175-9000/-, that was also the ordinary grade scale of the promoted post, namely, Sub Treasury Officer, with effect from 24.04.1996. In the meanwhile, the date of increment fell on 01.07.1996, therefore, the petitioner requested for fixation of his pay in the promoted post after sanctioning his increment on 01.07.1996 in the lower post of Accountant. Based on such request, his pay was fixed at Rs.6,900/- with effect from 01.07.1996 after adding one increment, since the scale of pay for the posts of Special Grade Accountant and Sub Treasury Officer was one and the same. Consequently, after such fixation with effect from 01.07.1996, his subsequent increments were also revised and he was paid with arrears to that effect.

4. It is further submitted by the learned counsel for the petitioner that sixty percent of the arrears from 01.01.1996 to 31.03.1998 was credited to his GPF account and the balance forty percent was paid to him in cash and the petitioner, after getting promotion to the post of Assistant Treasury Officer on 13.06.2003, retired from the said post on 31.05.2008. However, after six months from the date of his retirement, the second respondent herein has passed the present impugned proceedings dated 19.11.2008 ordering to recover a sum of Rs.49,581/- from the petitioner by re-fixing his pay with effect from 01.01.1996, that too, without issuing prior notice before passing such recovery proceedings, hence, such an approach adopted by the second respondent is in violation of the principles of natural justice.

5. In support of his submissions, learned counsel for the petitioner has also relied on a judgment of the Hon'ble Supreme Court in the case of STATE OF PUNJAB AND OTHERS VS. RAFIQ MASIH (WHITEWASHER), [reported in (2014) 8 SCC 883] for a proposition that for no fault of employees, the excess amount so paid shall not be recovered by the employer. By relying the said judgment, it is further submitted that in the present case also, the petitioner retired from the post of Assistant Treasury Officer on 31.05.2008, however, after a long gap of six months, in view of the ratio laid down by the Hon'ble Apex Court in the above said case, the present impugned proceedings dated 19.11.2008, passed by the second respondent cannot be sustained in the eyes of law.

6. A counter affidavit has been filed by the second respondent, but, nowhere in the counter affidavit, the authority has stated as to why the petitioner was fixed with pay at Rs.6,900/- with effect from 01.07.1996 after adding one increment. Even consequent to the said pay fixation with effect from 01.07.1996, when subsequent increments were also given, nowhere in the counter the respondents have mentioned that how the petitioner was not entitled to get subsequent increments and how they were also given to the petitioner whether it was on misrepresentation or on fraud.

7. It is seen from the records that the petitioner's pay was fixed at Rs.6,900/- by adding one increment with effect from 01.07.1996, since the scale of pay for the posts of Special Grade Accountant and Sub Treasury Officer was one and the same. It is also seen that consequent to the said fixation, subsequent increments were also revised and to that effect, entire arrears were also paid to the petitioner and thereafter, he retired from the services on 31.05.2008 after rendering 28 years of unblemished services in the respondent department. Thus, after six months from the date of his retirement, the present impugned proceedings dated 19.11.2008 of the second respondent seeking to recover the excess amount paid to the petitioner, that too, for no fault of him, cannot be legally sustained in the light of the ratio laid down by the Hon'ble Apex court in Rafiq Masih's case (cited supra). For better appreciation of the case, it is apposite to quote paragraph Nos.4 and 5 of the said judgment, which are stated below:-

> "4.In Shyam Babu Verma's case (Supra), this Court while observing that the petitioners-therein were not entitled to the higher pay scales, had come to the conclusion that since the amount has already been paid to the petitioner, for no fault of theirs, the said amount shall not be recovered by the respondent-Union of India. The observations made by this Court in the said case are as under:(SCC P.525, para 11)

"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 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. (emphasis supplied)."

5.In Sahib Ram Verma's case (Supra), this Court once again held that although the appellant-therein did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid his salary on the revised pay scale. This Court further observed that this was not on account of mis-representation made by the appellant but by a mistake committed by the Principal. In a fact situation of that nature, the Court was pleased to observe that the amount already paid to the appellant need not be recovered. In the words of the Court:(SCC p.20, para 5)

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which appellant cannot be held to be fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

8. Besides, as stated by the learned counsel for the petitioner, the second respondent, before passing the impugned order of recovery, did not issue any notice to the petitioner and therefore, the said procedure adopted by the authority is in violation of the principles of natural justice.

9. Thus, for all the aforesaid reasons, the impugned order is set aside and the writ petition is allowed. Consequently, the respondents are directed to fix his pay at Rs.6,900/-, which was his last drawn pay before his retirement in the post of Assistant Treasury Officer on 31.05.2008. Needless to state that as the petitioner is aged about 68 years, the respondents are directed to settle all the benefits within a period of four weeks from the date of receipt of a copy of this order. No Costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

rkm/smv

TO

1.The Director of Treasuries and Accounts,
Chennai - 600 015.

2.The Treasury Officer,
Cuddalore, Cuddalore District.

3.The Accountant General
(Accounts & Entitlements)
Tamil Nadu, Chennai - 600 018.

+1cc to Mr. P.Rajendran, Advocate, S.R.No. 26381
+1cc to the Government Pleader, S.R.No. 26310

W.P.No.28977 of 2008

VBA(CO)
GN(03/05/2019)