

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.5772 of 2010

C.Periyannan

.. Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by Secretary to Government,
Rural Development Department,
Secretariat, Chennai - 600 009.

2. The Assistant Director,
Local Boady Financial Audit,
Palacode Post & Taluk,
Dharmapuri District.

3. The Commissioner/Block Development Officer (Admin),
Panchayat Union, Palacode Post & Taluk,
Dharmapuri District.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the entire records relating to audit report for the year 2007-2008, dated 22.06.2009, passed by the 2nd respondent and to quash the portion relating to the petitioner in Para 10 and 11 of the said audit report dated 22.06.2009 and consequently direct the 3rd respondent to repay the sum of Rs.83,490/- and also to consider the period of service from 26.06.1978 to 07.02.1986.

For Petitioner : Mr.T.Karunakaran

For Respondents: Ms.K.Bhuvaneswari
AGP for R1 to R3

O R D E R

The instant writ petition has been filed challenging the audit report for the year 2007-2008, dated 22.06.2009, passed by the Assistant Director, Local Boady Financial Audit, Palacode Post & Taluk, Dharmapuri District and to quash the portion relating to the petitioner in Para 10 and 11 of the said audit

report dated 22.06.2009 and consequently direct the Commissioner/Block Development Officer (Admin), Panchayat Union, Palacode Post & Taluk, Dharmapuri District, to repay the sum of Rs.83,490/- and also to consider the period of service from 26.06.1978 to 07.02.1986.

2. The petitioner joined as Rural Medical Officer in the Panchayat Union, Palacode by an appointment order dated 26.06.1978. The petitioner joined as full-time Officer as per G.O.Ms.No.94 dated 31.10.1984. On 07.02.1986. The petitioner resigned his job. He rejoined the service on 15.05.1986. On attaining superannuation he retired from the service on 31.08.1996. Arrears of Rs.3,45,081/- was paid by the Commissioner/Block Development Officer (Admin), Panchayat Union, Palacode Post & Taluk, Dharmapuri District.

3. The 3rd respondent by letter dated 07.07.2009 asked the petitioner to appear on 08.07.2009 for clarification of the audit report. After receiving clarification, the petitioner was directed to return a sum of Rs. 83,490/-. The petitioner was told that if he does not pay back the amount, he will not be entitled to avail his retirement benefits. The petitioner paid the money of Rs.83,490/- on 13.07.2019. On the basis of information received by RTI, the petitioner sent a representation to the 3rd respondent challenging the direction for refund of the amount Rs. 83,490/-. The said representation was rejected by the order dated 09.02.2007, which is impugned herein.

4. Heard the counsel for the parties.

5. A perusal of the order would show that the impugned order is bristling with mistakes. For example, the impugned order states that, the petitioner was not working from 01.10.1984 to 15.05.1986, because he resigned his job and for that period, the petitioner had been paid a sum of Rs. 9352/- which was included in the arrears of pay, which is now sought to be recovered.

6. The learned counsel for the petitioner has draw the attention of this Court that, the impugned order itself clearly states that, the petitioner had resigned his job only on 07.02.1986, and therefore there is no necessity to recover the amount for the period 01.10.1984 to 15.05.1986. Since the petitioner has resigned his job only on 07.02.1986 and the figure 01.10.1984, which is mentioned in the impugned order is clearly wrong. The order for recovery on this Court has to be set aside. Similarly, it is stated in the impugned order that from 15.05.1986 to 31.08.1996, the arrears of Rs.1,48,000/- has been paid in excess and the petitioner is entitle to get Rs.1,11,000/- as arrears of pay and therefore he has paid an

excess of Rs.38,000/-. The said figure is also erroneous in as much as the calculation of same amount is that the petitioner has supposed to have retired only on 31.08.1998. The petitioner, admittedly resigned only in 31.08.1998. The petitioner is therefore entitled to get his pension benefits till 1998 and not 1996. The amount of Rs.1,48,000/- has therefore been wrongly calculated. It should be calculated by taking into account that the petitioner has retired on 31.08.1998 and not on 31.08.1996, as mentioned in the impugned order. These two glaring mistakes in the impugned order indicates non-application of mind by the respondents while calculating the amount to be recovered from the petitioner.

7. The impugned order is set aside and the matter is remanded back to the respondent No.2 to recalculating the arrears to be paid for the petitioner. The petitioner is about 80 years old. Keeping in view of this fact, the 2nd respondent is directed to calculate the arrears amount within a period of two weeks from the date of receipt of a copy of this order. After the said arrears amount is calculated, the amount excessively recovered from the petitioner should be refund back to the 3rd respondent with interest at the rate of 6%.

8. In the above terms, Writ petition is allowed. No Costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Pkn.

To

1. The Secretary,
State of Tamil Nadu,
Rural Development Department,
Secretariat, Chennai - 600 009.

2. The Assistant Director,
Local Boady Financial Audit,
Palacode Post & Taluk,
Dharmapuri District.

3. The Commissioner/Block Development Officer (Admin),
Panchayat Union, Palacode Post & Taluk,
Dharmapuri District.

Copy to :The Section officer
VR Section, High Court, Madras-104.

W.P.No.5772 of 2010

PP (CO)
CB(15/10/2019)



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