

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.35682 of 2005
and W.P.M.P.No.38480 of 2005
and W.P.M.P.No.1721 of 2008

N.Venkatesan

... Petitioner

Vs.

1.The Secretary,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chennai 600 005.

2.The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
Dharmapuri Circle, Dharmapuri,
Dharmapuri.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in Proceedings No.A1/00197/ENT.2/Tha.A/05, dated 20.09.2005 and the order of the second respondent in Proceedings No.6605/Pa.A/Ko.Su.Th/2004, dated 23.08.2004 and quash the same and direct the respondents to restore the fixation of pay as it existed prior to the issuance of the said orders and grant all consequential benefits to the petitioner.

For Petitioner : M/s.P.Rajendran

For Respondents : Mrs.R.Gandhi Madhi

ORDER

This petition is filed to quash the order of the first respondent in proceedings No.A1/00197/ENT.2/Tha.A/05, dated 20.09.2005 and the order of the second respondent in proceedings No.6605/Pa.A/Ko.Su.Th/2004, dated 23.08.2004.

2. The petitioner, who was employed as a Steno Typist was advanced to the selection grade post of Steno Typist on completion of 10 years of service, was served with the impugned

order dated 23.08.2004, whereby his advancement to the post of selection grade came to be cancelled, and consequently, the order of recovery of excess amount was also passed on 20.09.2005.

3. It is not in dispute that the petitioner was not served with any prior notice before the cancellation of the selection grade scale of pay as wells as the order of recovery of alleged excess payment. When the petitioner had been employed as a selection grade Steno Typist from 14.03.1995 onwards for almost 10 years, the respondents ought to have given a prior notice to him calling for explanation as to why his selection grade should not be cancelled or the excess payment be recovered.

4. Apparently, both the impugned orders have been passed without any prior notice, which is a clear violation of the principles of natural justice. On this short ground, the cancellation of selection grade advanced to the petitioner itself would be bad in law and liable to be quashed.

5. The Hon'ble Apex Court in the decision reported in 2015 (4) SCC 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others) had held that recovery, in cases where an employee has been wrongfully required to discharge duties of a higher post, and has been paid accordingly, is impermissible in law. By applying the ratio laid down by the Apex Court in the aforesaid judgment, the consequent recovery order would also be illegal.

6. For all the foregoing reasons, I am of the view that the petitioner is entitled to succeed in the Writ Petition. Consequently, the order passed by the first respondent in Proceedings No.A1/00197/ENT.2/Tha.A/05, dated 20.09.2005 and the order passed the second respondent in Proceedings No.6605/Pa.A/Ko.Su.Th/2004, dated 23.08.2004 are quashed. The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Secretary,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chennai 600 005.

2. The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
Dharmapuri Circle, Dharmapuri,
Dharmapuri.

+1 cc to Mr.P.Rajendran, Advocate, S.R.No.20457

+1 cc to Mrs.R.Gandhimathi, Advocate, S.R.No.20245

W.P.No.35682 of 2005

SSM(04/04/2019).



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