IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.68 OF 2013

R.Krishnamoorthy ...Petitioner

Versus

1. The Local Fund Audit
   Local Fund Office
   Kuralagam IV Floor,
   Chennai - 108.

2. The Commissioner,
   City Municipal Corporation,
   Erode,
   Erode District. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the second respondent in Na.Ka.No.C1/2463/2012, dated 23.11.2012 and Na.Ka.No.C1/11442-2003, dated 21.11.2003 and quash the same thereby directing the respondents to pay the amount recovered from salary Rs.33,284/- with 18% interest.

For Petitioner : Mr.A.R.Nixon

For Respondent - 1 : Mr.J.Pothiraj, Special Government Pleader

Respondent - 2 : Mr.M.Rajamathivanan

O R D E R

The relief sought for in the present writ petition is to call for the records relating to the order passed by the second respondent in Na.Ka.No.C1/2463/2012, dated 23.11.2012 and Na.Ka.No.C1/11442-2003, dated 21.11.2003 and quash the same thereby directing the respondents to pay the amount recovered from salary Rs.33,284/- with 18% interest.

2. The brief facts of the case reads as follows:

The petitioner was appointed as Office Assistant in a permanent post on 31.08.1974 in the second respondent Office and promoted as Bill Collector on 28.03.1992. Then, he retired from service on 31.01.2012.

2.1 While so, the second respondent had fixed the pay scale on promotion as Bill Collector. During the year 2003, the second respondent had passed an order in Na.Ka.No.C1/11442-03, dated 21.11.2003 stating that as per G.O.Ms.No.664 Finance Department dated 24.08.1992, the special pay was not recommended, however, wrongly the scale of pay was fixed and 5% of Special Pay was also paid and therefore, the same was questioned by the first respondent and the audit party made objection with that effect. Hence, the excess amount of 5% Special Pay was ordered to be recovered from the salary in 60 equal instalments.

2.2 As per the auditor's objection, the second respondent planned to recover a sum of Rs.33,284/- from November 2003 to a tune of Rs.550/- per month. But the second respondent recovered the said sum for 72 installments in excess mistakenly from the salary of the petitioner. Totally a sum of Rs.43,450/- was recovered from the petitioner's salary. After realizing the mistake, vide Letter in Na.Ka.No.C1/2463/2012 dated 23.11.2012, the second respondent informed the petitioner that steps are taken to refund the excess amount of Rs.10,166/- recovered from his salary. Thereafter, the same was also refunded to the petitioner. However, aggrieved by the recovery proceeding of the second respondent, the petitioner has filed the present writ petition for the relief stated supra.

3. The learned counsel for the petitioner submitted that though the amount of Rs.10,166/- excessively recovered from the salary of the petitioner was refunded by the second respondent Corporation, the amount of Rs.33,284/- recovered from the salary of the petitioner is illegal and therefore, he is seeking to quash the impugned proceedings of the second respondent.

4. The learned counsel appearing for the second respondent would contend that the second respondent had refunded the excess amount Rs.10,166/- recovered from the salary of the petitioner to him. He would further contend that when the second respondent ordered for recovery of amount of Rs.33,284/- from the salary of the petitioner and also recovered the said amount, the petitioner had not objected the same, whereas, only after the petitioner was retired from service, he belatedly challenged the proceedings of the second respondent. He therefore prayed that the present writ petition may be dismissed.

5. Heard both sides and perused the materials available on record.

6. Pursuant to the proceedings of the second respondent in Na.Ka.No.C1/11442-03, dated 21.11.2003, the amount of Rs.43,450/- had been recovered from the salary of the petitioner. Thereafter, when the second respondent came to know that they had wrongly recovered Rs.43,450/- instead of Rs.33,284/- from the salary of the petitioner, immediately refunded the excess amount of Rs.10,166/- recovered from the petitioner's salary. But only after the petitioner attained his superannuation, he had filed the present writ petition seeking to quash the proceedings of the second respondent dated 23.11.2012 & 21.11.2003 respectively and to re-pay the amount of Rs.33,284/- excessively recovered from his salary with 18% interest.

7. It is pertinent to note that at the time when the second respondent ordered for recovery a sum of Rs.33,284/- from the salary of the petitioner, the petitioner was absolutely quiet and not objected the same. Hence, the second respondent had recovered the said amount from the petitioner's salary. It is also to be noted that the petitioner has approached this Court belatedly only after his superannuation.

8. Considering the facts and circumstances of the case, this Court finds that there is no merit in the petitioner's case and therefore, the relief sought for in the present writ petition cannot be granted by this Court.

9. In the result, this Writ Petition is dismissed as being devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Local Fund Audit
Local Fund Office
Kuralagam IV Floor,
Chennai - 108.

2. The Commissioner,
City Municipal Corporation,
Erode,
Erode District.

+1cc to Mr.A.R.Nixon, Advocate, S.R.No.93999
+1cc to Mr.M.Rajamathivanan, Advocate, S.R.No.93298

W.P.No.68 of 2013

VSNII(CO)
CS/19/02/2020