

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1488 of 2018
and
WMP.No.1892 of 2018

S.Selvaraj

... Petitioner

Vs

1. District Collector,
Erode District at Erode.
2. The Assistant Director of Town Panchayat,
Erode Region, Erode.
3. The Executive Officer,
Anthiyur Town Panchayat,
(Selection Grade),
Anthiyur, Erode District. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the 3rd respondent made in Na.Ka.No.335 of 2017, dated 12.01.2018 to quash the same and to consequently direct the respondents to appropriately fix the revised scale of pay inclusive of VII Pay Scale fixation thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.R.S.Selvam, G.A., for RR1 & 2
Mr.E.Neelakandan, Standing Counsel R3

WEB COPY
O R D E R

The order impugned in the Writ Petition is the revision of pay scale as well as recovery.

2. The learned counsel for the Writ Petitioner states that the Petitioner is working as a Grade II Electrician in Anthiyur Town Panchayat. On account of erroneous fixation of scale of

pay, an audit objection was raised by the audit party and accordingly, the order impugned was issued for refixation of scale of pay of the Writ Petitioner and consequently, recovery is also imposed in respect of the excess pay granted to the Writ Petitioner.

3. Challenging the said order, the Writ Petitioner filed the present Writ Petition on the ground that no notice or opportunity was provided to the Writ Petitioner. Thus, the Writ Petitioner was unable to defend his case before the authority competent and the impugned order is in violation of principles of natural justice. Thus, the Writ Petition is to be allowed.

4. The learned Government Advocate appearing on behalf of the respondents objects the above contention by stating that through the order dated 12.01.2018, it was informed to the Writ Petitioner that the fixation of scale of pay to the Writ Petitioner was erroneous and accordingly revised fixation has also been proposed. Instead of submitting objection, the Writ Petitioner has filed the present Writ Petition.

5. On perusal of the order impugned, it is seen that the said order cannot be construed as a show cause notice. Contrarily, the order impugned shows that the scale of pay fixed to the Writ Petitioner was erroneous and accordingly, the revised scale of pay was fixed and the order of recovery is also passed. However, the show cause notice must contain the details and particulars of the audit objections as well as the erroneous fixation of scale of pay. Contrarily, the impugned order was passed.

6. Thus, this Court is of the considered view that the mandatory requirement of opportunity was not provided to the employee. Any order affecting service benefits of an employee, has to be passed only after providing opportunity to the employee.

7. In view of the above, the order impugned passed by the respondent in proceedings in Na.Ka.No.335 of 2018, dated 12.01.2018 is quashed and the matter is remitted back to the third respondent. The third respondent is directed to issue show cause notice setting out all the factual details to the Writ Petitioner within a period of four weeks from the date of receipt of a copy of this order. On receipt of the show cause notice, the Writ Petitioner is directed to submit his explanation / objections within a period of three weeks from the date of receipt of the show cause notice. On receipt of the explanation, the third respondent is directed to consider the objections of the petitioner and the materials available on record and pass orders on merits and in accordance with law

within a period of eight weeks, therefrom.

8. With the above observations, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The District Collector,
Erode District at Erode.
2. The Assistant Director of Town Panchayat,
Erode Region, Erode.
3. The Executive Officer,
Anthiyur Town Panchayat,
(Selection Grade), Anthiyur, Erode District.

+1cc to Mr. L.Chandra Kumar, Advocate, S.R.No. 10352
+1cc to the Government Pleader, S.R.No. 10829

NRL (CO)
GN (11/03/2019)

W.P.No.1488 of 2018

सत्यमेव जयते

WEB COPY