

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2019

Coram

The Honourable Mr. Justice D. KRISHNAKUMAR

W.P.No.10911 of 2014
and
W.M.P.No.33158 of 2018

K.M.Khaja Allauddin

...Petitioner

Versus

1.The Principal Accountant General of Tamilnadu,
No.361, Anna Salai,
Chennai.

2.The Principal,
Lady Wellington Institute of Advance Study in Education,
Chepauk,
Chennai - 05.

...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 in pursuant to the first impugned order issued by the first respondent in proceeding Pen 11/VI/Rev/21108686/ADK/28 dated 23.05.2013 and the consequential 2nd impugned order issued by the second respondent in proceeding Na.Ka.No.149/A/2013 dated 18.03.2014 and quash these orders and consequently, direct the respondents to fix the pension based on the last pay drawn by the petitioner in the scale of pay of Rs.15790+Grade Pay of Rs.4,800 and pay all his pension and pensionary benefits.

For Petitioner : Ms.Swathi Subramaniam

For Respondent - 1 : Mr.Vijay Shankar

Respondent - 2 : Mr.V.Shanmuga Sundar,
Special Government Pleader

O R D E R

The prayer in this Writ Petition is to call for the records in pursuant to the first impugned order passed by the first respondent in proceeding Pen 11/VI/Rev/21108686/ADK/28 dated

23.05.2013 and the consequential second impugned order passed by the second respondent in proceeding Na.Ka.No.149/A/2013 dated 18.03.2014 and quash these orders and to direct the respondents to fix the pension based on the last pay drawn by the petitioner in the scale of pay of Rs.15790+Grade Pay of Rs.4,800 and pay all his pension and pensionary benefits.

2.1. The petitioner had joined in the service of the second respondent/Institute as Lab Assistant on 16.06.1976 and promoted as Store Keeper on 02.02.1998. Subsequently, he was promoted as Assistant on 04.10.2004 and further he was promoted to the post of Superintendent on 02.02.2013 and retired from service on 28.02.2013. Hence, pension proposal was submitted by the second respondent in the revised Scale of Pay of Rs.15,790/- + Grade Pay of Rs.4,800/- as last drawn salary of the petitioner. However, the said pension proposal was returned from the first respondent's Office viz., Principal Accountant General (A & E), Tamil Nadu, Chennai with an objection to reduce the Grade Pay from Rs.4,800/- to Rs.2,800/-.

2.2. Thereafter, the first respondent had directed the petitioner to submit a revised pension proposal and the second respondent had passed the impugned order vide proceedings dated 18.03.2014 reducing the petitioner's basic pay to Rs.11,340/- + Grade Pay of Rs.2,800/- with effect from 01.01.2006. Consequent to the reduction of the scale of pay, a recovery of a sum of Rs.77,071/- was also imposed on the petitioner. Challenging the aforesaid reduction of scale of pay and recovery of the said sum imposed on the petitioner, the petitioner has filed the present Writ Petition.

3. The learned counsel appearing for petitioner submitted that the impugned orders passed by the respondents 1 & 2 are liable to be set aside on the sole ground of violation of principles of natural justice, as no notice was issued to the petitioner.

4. The learned counsel appearing for the first respondent submitted that only as per the G.O.(Ms)No.45, Finance (PC) Department dated 10.02.2011, the first respondent issued the impugned order, however, the learned counsel fairly admitted that no opportunity of hearing was given to the petitioner before issuing such order and based on such order, the second respondent issued the second impugned order, thereby, reducing the scale of pay and also the recovery proceedings were initiated.

5. Heard the learned counsel for the parties concerned and perused the materials available on record.

6. On perusal of the records, it is seen that before passing the impugned orders, the petitioner was not put on any notice. Therefore, this Court does not have any hesitation to set aside the aforesaid impugned orders. If any amount that already recovered, the same shall be refunded to the petitioner. Admittedly, the fact that the order of recovery that has been passed by the second respondent is only pursuant to the petitioner's retirement from service. Insofar as the recovery is concerned, the Honourable Supreme Court, in the case of State of Punjab and Others Vs. Rafiz Masih (White Washer) and Others reported in (2015) 4 SCC 334 laid down certain principles, whereby, Employers have been restrained from initiating any recovery proceedings against the employee, and it would be appropriate to refer to said principles, which reads as follows:-

"(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

Thus, in the light of the judgment referred to supra, the recovery proceedings initiated by the second respondent is not sustainable.

7. In the result, the Writ Petition is allowed, the impugned orders passed by the respondents 1 & 2 are set aside insofar as recovery is concerned. However, it is open to the respondents to proceed against the petitioner, after issuing fresh notice and affording a reasonable opportunity of hearing to the petitioner and thereafter, pass appropriate orders in

accordance with law insofar as revision of scale of pay, if any. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Principal Accountant
General of Tamilnadu,
No.361, Anna Salai,
Chennai.
2. The Principal,
Lady Welington Institute of Advance Study in Education,
Chepauk,
Chennai - 05.

+1cc to Mr.R.Prem Narayan, Advocate, Sr.No.24339
+1cc to Government Pleader, Sr.No.24690

gp(co)
mp(21/05/2019)

W.P.No.10911 of 2014

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