



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.12.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**W.P (MD)No.16689 of 2013
and
M.P (MD)No.1 of 2013**

P.Ganesan .. Petitioner
Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Secretariat, Chennai.

2.The Secretary to Government,
Government of Tamil Nadu,
Department of Labour and Employment,
Secretariat, Chennai.

3.The Director of Employment and Training,
Guindy, Chennai - 32.

4.The Deputy Director,
Office of Director of Employment and Training,
Guindy, Chennai - 32.

5.The Principal,
Government Industrial Training Institute,
Devakottai Road - 630 005,
Sivagangai District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 21.09.2012 vide Se.Mu.Aanai No.33729/Pa.A2/2012 passed by the 4th respondent and quash the same and consequently direct the respondents 2 and 3 to revise the petitioner's pensionary benefits by treating the petitioner as selection grade store keeper and pass such further or other orders.

For Petitioner : Mr.S.Anwar Sameem
For Respondents 1 to 4 : Mr.C.Dhayalan,
Government Advocate.
For Respondent No.5 : No Appearance



ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 21.09.2012 vide Se.Mu.Aanai No. 33729/Pa.A2/2012 passed by the 4th respondent and quash the same and consequently direct the respondents 2 and 3 to revise the petitioner's pensionary benefits by treating him as selection grade store keeper.

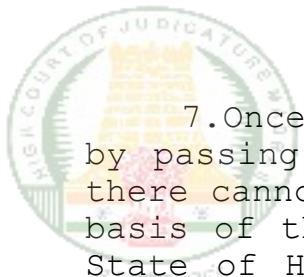
2.The case of the petitioner is that he joined the Department of Employment and Training as Junior Assistant on 31.03.1990. On completion of 10 years of service, he was awarded selection grade as per G.O.Ms.No.210, dated 11.03.1987 and subsequently, he was promoted as Store Keeper, which is equivalent to Assistant, in the year 2003. On the application submitted by him, dated 14.03.2012, he was allowed to retire as Selection Grade Store Keeper on 31.03.2012. Thereafter, the 4th respondent passed the impugned order, dated 21.09.2012, cancelling the selection grade awarded to him, against which, the present writ petition has been filed.

3.The learned counsel for the petitioner submitted that the petitioner was awarded selection grade as per G.O.Ms.No.210, dated 11.03.1987 and he was allowed to retire on 31.03.2012 on the basis of voluntary retirement and the impugned order cancelling the selection grade was passed on 21.09.2012, without hearing the petitioner.

4.The learned Government Advocate appearing for the respondents 1 to 4 submitted that taking into consideration of the clarification issued in Government Letter No.7296/S/2012-1, Personnel and Administrative Reforms (S) Department, dated 14.05.2012, the fourth respondent cancelled the selection grade granted to the petitioner and therefore, interference of this Court is not necessary.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4 and perused the materials placed on record.

6.It is not in dispute that the petitioner has been granted selection grade in the post of Junior Assistant in the year 2000 and he was allowed to retire from service on 31.03.2012, as Selection Grade Store Keeper, on the request of the petitioner for voluntary retirement. The 4th respondent has passed the impugned order dated 21.09.2012, cancelling the selection grade granted to the petitioner, after the retirement and that too without giving any show cause notice to him.



7.Once the petitioner has been relieved or retired from service by passing appropriate relieving order by the competent authority, there cannot be any employer-employee relationship survived. On the basis of the Judgement of the Hon'ble Supreme Court in Sahib Ram & State of Haryana and Others reported in 1995 Supp(1) SCC 18, this Court, in number of decisions, has held that if the petitioner has not made any misrepresentation, but has wrongly been paid higher scale of pay by the Department itself, the same cannot be recovered by the Department without prior notice. In the present case, the respondent is not in a position to explain whether the excess payment made to the petitioner was due to any misrepresentation made by the petitioner. Therefore, this Court is of the view that once the petitioner has been relieved or retired from service by passing appropriate relieving order by the competent authority, the relationship of employer-employee ceased to exist and therefore, unless there is specific rule empowering the competent authority to pass an order after due notice, no action can be initiated for recovery of the amount. Therefore, this Court is of the view that the impugned order does not stand to any good reason and the same is liable to be set aside and accordingly, the impugned order, dated 21.09.2012, passed by the 4th respondent, is set aside and the respondents 2 and 3 are directed to revise the petitioner's pensionary benefits by treating the petitioner as selection grade store keeper and pay the revised pension within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Secretariat, Chennai.

2.The Secretary to Government,
Government of Tamil Nadu,
Department of Labour and Employment,
Secretariat, Chennai.

3.The Director of Employment and Training,
Government of Tamil Nadu, Chennai.

<https://hcservices.scdn.gov.in/03services/> - 32.



4.The Deputy Director,
Office of Director of Employment and Training,
Guindy, Chennai - 32.

+1 CC to Mr.T.ANTONY ARUL RAJ, Advocate (SR-104859[F] dated 13/12/2019)

+1 CC to SPL GP (SR-105089[F] dated 16/12/2019)

**ORDER MADE IN
W.P(MD)No.16689 of 2013
13.12.2019**

MK (03.01.2020) 4P 7C