



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.11532 of 2014

and

M.P.(MD).Nos.1 and 2 of 2014

S.Vijayakumar

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
Collectorate at Nagercoil,
Kanyakumari District-629 001.

2.The District Revenue Officer,
Collectorate at Nagercoil,
Kanyakumari District-629 001.

3.The Personal Assistant (G) to the
District Collector,
Collectorate at Nagercoil,
Kanyakumari District-629 001.

... Respondents

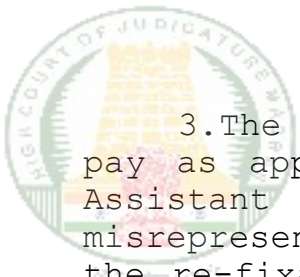
PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order issued by the 3rd respondent in Ref.No.B1/4602/2014 dated 07.05.2014 directing to recover a sum of Rs.2,07,000/- (Rupees Two Lakhs and Seven Thousand only) from the petitioner's Death cum Retirement Gratuity (DCRG), quash the same.

For Petitioner : Mr.T.Cibichakraborty
For R1 to R3 : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The order of recovery and revision of scale of pay issued in proceeding, dated 07.05.2014, is under challenge in the present writ petition.

2.The writ petitioner was initially appointed as Junior Assistant in Taluk Office, Thovalai, Kanyakumari District on 09.06.1994. He was placed under Selection Grade in the year 2004 and his pay was fixed in accordance with the Government Orders in force. The writ petitioner was allowed to retire from service under the Voluntary Scheme with effect from 31.12.2013. Accordingly, his pensionary benefits are yet to be settled.



3.The learned counsel for the writ petitioner states that the pay as applicable to the writ petitioner in the cadre of Junior Assistant was fixed by the establishment and there was no misrepresentation on the part of the writ petitioner. This apart, the re-fixation of pay was done in accordance with the proceedings and there is no irregularity or error for the pay fixation. However, on account of the audit objection, the respondent issued the impugned order in proceeding, dated 07.05.2014 revising the scale of pay of the writ petitioner and further imposed recovery of excess payment already made.

4.The learned Additional Government Pleader appearing on behalf of the respondents states that the impugned order of recovery is in accordance with the procedure and the scale of pay was erroneously fixed to the writ petitioner. Accordingly, excess salary was paid to the writ petitioner and the same is sought to be recovered. Thus, there is no infirmity in respect of the impugned order of recovery passed in the present writ petition.

5.The counter affidavit filed by the first respondent reveals that the pension proposal was already sent to the Accountant General, Chennai, vide office letter, dated 07.05.2014 and the petitioner has been sanctioned with GPF final payment of Rs.3,88,978/- as per the Principal Accountant General's proceedings dated 10.06.2014. Moreover, the excess amount ordered to be recovered from the petitioner was already received by him unreasonably. The counter affidavit specifically states that there is misrepresentation on the part of the writ petitioner. Regarding the misrepresentation, it is stated as under:

"8(E)The orders directing the petitioner to repay the excess amount is reasonable according to rules in force. Thiru.S.Vijayakumar has represented to revise his pay as per Ir.No.63305/PC/2010-1&2 finance dated 8,11,10 in the cadre of Selection Grade Junior Revenue Assistant on 28.03.2012 to the Tahsildar, Thovalai and had misinterpreted Government Lr.No.63305/PC/2010-1&2 finance dated 08.11.2010 and G.O.No.234 Finance (Pay Cell) Department dated 01.06.2009 by omitting the sentence which states that selection Grade Scale should be limited to the next promotional level scale of pay. His next promotion post is Assistant and the scale of pay of which is 5200-20200+G.P.2800. In this case, while the next promotion scale is 5200-20200+G.P.2800 he had claimed and received Rs.9300-34800-G.P.4200 knowingly."

The counter further states that "the excess amount is ordered to be recovered after following the due formalities and not in a casual manner. Though the pensionary benefits are valuable rights to the retired employee, any dues found pending must be recovered from the DCRG amount as per the existing Pension Rules No.70 of the Tamil Nadu Pension Rules and not recovering the excess amount may lead to a heavy loss to Government."

The learned counsel for the writ petitioner states that a notice was



issued setting out the facts and details to the writ petitioner enabling him to submit his explanation.

6. This Court is of the considered opinion that with regard to the allegation of misinterpretation of the Government Letter, this Court is of the opinion that the writ petitioner was not a self-drawing officer. Pay particulars produced by the writ petitioner is to be counter-checked by the higher authorities. Thus, the responsibility of verifying the files in relation to the revision of pay scale must be scrutinized by the higher authority. The writ petitioner, who is holding the post of Junior Assistant, is not empowered to take a decision in respect of revision of scale of pay. Therefore, misinterpretation of the writ petitioner cannot be held against him at this point of time. Even in a case of misrepresentation on the part of the writ petitioner, it is a view on the part of the higher authority to take a revision of scale of pay proposal and accordingly, revision in accordance with the Government Orders in force. Thus, misinterpretation of the Government letter at this length of time cannot be held against him.

7. As far as recovery is concerned, this Court is of the considered opinion that the writ petitioner was allowed to retire from service on 31.12.2013 and the pensionary benefits are yet to be settled on account of the punishment of the writ petitioner regarding the recovery of excess salary paid to the petitioner and re-fixation of pay of the writ petitioner in the post of Junior Assistant Selection Grade is to be done strictly in accordance with the Government Orders and as per the pay rules in force. The competent authorities are empowered to correct the mistakes in the scale of pay as well as the revision of pay. Thus, there is no impediment for the authorities/respondent in revising the scale of pay by rectifying the mistakes in accordance with the pay rules and Government Orders in force. However, the excess salary already paid need not be recovered, in view of the fact that the writ petitioner has retired from service and misinterpretation of the Government Orders cannot be held against him, as the writ petitioner was not a self-drawing officer. Accordingly, the following orders are passed;

(i) The respondents are directed to revise the scale of pay of the writ petitioner as well as the pension in accordance with the Government Order as well as the pay rules in force and applicable revision of scale of pay can be granted to the writ petitioner in accordance with the rules.

(ii) The excess salary already paid to the writ petitioner cannot be recovered, if at all any amount was recovered, the same is directed to be reimbursed to the petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

(iii) In respect of revision of scale of pay, the respondents are directed to issue show cause notice setting out the facts and details to the writ petitioner within a period of four weeks from the date of receipt of a copy of a copy of this order and on receipt of such show cause notice, the writ petitioner is directed to submit his explanation within a period of two weeks from the date of



receipt of a show cause notice and the competent authorities/respondents shall consider the explanation under the Government Orders in force and pass orders fixing the scale of pay of the petitioner in accordance with the pay rules and as per the Government Orders in force, within a period of six weeks therefrom.

WEB COPY In view of the above, this writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.E)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The District Collector,
Kanyakumari District,
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District Collector,
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+1 CC to M/s.ISAAC CHAMBERS, Advocate SR-68395.

+1 CC to SPL GP SR-68455.

W.P. (MD) No.11532 of 2014
and
M.P. (MD) .Nos.1 and 2 of 2014

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CS: (09/07/2019) 4P 6C