



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE **D. KRISHNAKUMAR**

W.P(MD)No.13727 of 2017 and

WMP(MD) .Nos.10708 and 10709 of 2017

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R. Balasubramanian

... Petitioner

Vs.

1.The Commissioner,
Sivagangai Municipality,
Sivagangai.

2. The Director,
Local Fund Audit,
4th Floor, Chennai - 600 108.

3.The Regional Director,
Municipal Administration,
Madurai - 625 016.

... 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 impugned order passed by the first respondent in Na.Ka.No.2954/C1/2016 and Na.Ka.No.2954/2016/C1/2017 dated 15.05.2017 and quash the same and direct the first respondent not to make any recovery from the salary of the petitioner and release the pension by fixing the entitled pay (including grade pay) and release pension for the petitioner.

For Petitioner : Mr. N. Tamil Mani

For R1 : Mr. J. Lawrance

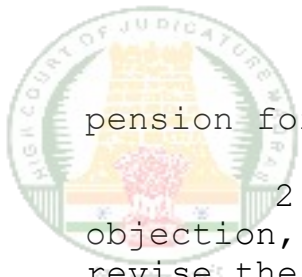
Standing Counsel

For R2 and R3 : Aayiram K. Selvakumar

Additional Government Pleader

ORDER

This writ petition has been filed to quash the impugned orders passed by the first respondent in Na.Ka.No.2954/C1/2016 and Na.Ka.No.2954/2016/C1/2017, dated 15.05.2017 and consequently, to direct the first respondent not to make any recovery from the salary of the petitioner and release the pension by fixing the entitled pay (including Grade Pay) and release



pension for the petitioner.

2. According to the petitioner, based on the audit objection, the first respondent has passed the impugned orders to revise the fixation of pay to him.

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3. According to the respondents, Selection Grade in the cadre of Revenue Assistant should not be granted in the pay scale of Rs.1200 / 1200-30 - 1560 - 40 - 2040, because, the next promotional post from the cadre of Revenue Assistant is the Junior Assistant with pay scale (ordinary) Rs. 975/ 975-25-1150-30-1660. Therefore, based on the audit objection, correct fixation of pay has been fixed by the Department and hence, the first respondent / Department has passed the impugned recovery proceedings.

4. At the time of hearing, the learned counsel appearing for the petitioner relying upon the decision of the Hon'ble Supreme Court reported in **2015(4) SSC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer) and others** and submitted that the salary of the petitioner is fixed in a wrong scale of pay and it is a fault committed by the Department and their officers, for which the petitioner should not be penalized, after a lapse of number of years, that too, after retirement of the petitioner. However, the learned counsel for the petitioner further states that if any revised pay fixed by the department as per the Government orders, the respondents can redo the said exercise after providing an opportunity of hearing to the petitioner to revise the pensionary benefits.

5. The learned Additional Government Pleader appearing for the respondents 2 and 3 would submit that there is no dispute with regard to the decision of the Hon'ble Supreme Court, which has given a direction for the recovery order passed by the Department. But, on the facts of the present case, that first respondent has passed the recovery order after providing an opportunity of hearing to the petitioner. Though the pay fixation is being wrongly fixed by the Department and the same is contrary to the Government Order and based on the audit objection, pay fixation has been correctly fixed, only after retirement from the service. Therefore, the impugned order passed by the respondent is in accordance with law.

6. By considering the aforesaid rival submissions of the parties and also considering the Judgment of the Hon'ble Supreme Court, the petitioner comes under the "C" category employee of the respondent Department and he was retired from service on 30.09.2012 and thereafter, the impugned order has been passed for recovery of the aforesaid amount based on the audit objection is liable to be quashed.



7. Therefore, in view of the decision of the Hon'ble Supreme Court stated Supra, the impugned order passed by the first respondent, dated 15.05.2017 is liable to be set aside and accordingly, set aside and consequently, this Writ Petition is allowed. However, it is made clear that it is open to the first respondent to refix the pensionary benefits of the petitioner, after providing an opportunity to the petitioner in the manner known to law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

trp

To

1.The Commissioner,
Sivagangai Municipality,
Sivagangai.

2. The Director,
Local Fund Audit,
4th Floor, Chennai - 600 108.

3.The Regional Director,
Municipal Administration,
Madurai - 625 016.

+1 CC to M/s.N.TAMILMANI, Advocate (SR-81909[F] dated 16/08/2019)

+1 CC to M/s.SPL GP (SR-81931[F] dated 16/08/2019)

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KM/ (01.11.2019) 3P 6C