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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.12017 of 2013

R. Velayutham

.. Petitioner

Vs

1. The Director of Public Health
And Preventive Medicine,
Anna Salai (D.M.S., Compound),
Chennai-6.
2. The Accountant General (A&E),
Office of the Principal Accountant General,
Teynampet, Chennai - 18.
3. The Deputy Director of Health Services,
Thanjavur.

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to restore the last drawn pay received by the petitioner on the date of his retirement on 31.12.2005 and accordingly revise the pension and pensionary benefits and pay the arrears and other monetary benefits with interest.

For Petitioner : Mr.R.Prem Narayan

For RR 1 & 3 : Mr.S.Thangavel,
Special Government Pleader

For R2 : Mr.V.Vijay Shankar



ORDER

This writ petition has been filed by the petitioner seeking for a direction to the respondents to restore the last drawn pay received by the petitioner on the date of his retirement on 31.12.2005 and accordingly revise the pension and pensionary benefits and pay the arrears and other monetary benefits with interest.

2. According to the writ petitioner, he was initially appointed as Basic Health Worker on 20.09.1965 and was promoted as Health Supervisor on 20.02.1989, which was subsequently re-designated as Health Inspector Grade-I. On 04.11.1988, the pay of the petitioner was fixed in the scale of Rs.1,600/- - 2,660/- in the post of Health Inspector, which was subsequently revised to Rs.5,900/- to Rs.9,900/-, vide G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998. At the time of retirement, the petitioner was in the pay scale of Rs.5,900/- - Rs.9,900/- and his pension was also fixed in the said pay scale.

3. The case of the petitioner as set out in the affidavit is that on an audit objection questioning the fixation of pay of the petitioner, the impugned order was passed ordering recovery of excess amount paid to the writ petitioner. The pay of the petitioner was also re-fixed in the scale of Rs.8,150/- to Rs.7,400/-. Meanwhile, the second respondent issued proceedings dated 20.01.2006 stating that the pay of the petitioner was wrongly fixed and accordingly ordered for recovery and the reason stated was that the pay fixed on 04.01.1988 was erroneous. After a lapse of so many years, the pay was reduced from Rs.8150/- to Rs.7400/-. Thereafter, the petitioner has filed a writ petition in W.P.No.15690 of 2008 and the same was allowed by this Court by order dated 10.01.2011 setting aside the recovery order and it was further directed that in case any recovery has been made in pursuance to impugned order therein, the same be refunded to the petitioner forthwith. But the petitioner's last pay drawn was not restored so far. Moreover, in the implementation order dated 26.05.2011, the second respondent simply implemented the quashing of recovery and has not stated anything about the restoration of his last drawn pay. Hence, the petitioner has made a representation to the respondents requesting to restore the last drawn pay received by the petitioner on the date of his retirement on 31.12.2005 and accordingly revise the pension and pensionary benefits and pay the arrears and other monetary benefits with interest. But, no order has been passed by the concerned authority in this regard till now. Hence, the writ petitioner has come forward with the present writ petition before this Court.



4. Heard both sides and perused the materials available on record.

5. It is seen that the writ petitioner had earlier filed a writ petition in W.P.No.15690 of 2008 before this Court, challenging the order of the second respondent/Accountant General, dated 10.01.2011. The learned counsel for the petitioner, at the time of hearing of this writ petition, has given up his claim to the restoration of pay scale and has confined his challenge to the impugned order of recovery. On considering the merits of the case, the aforesaid writ petition in W.P.No.15690 of 2008 was allowed by order dated 10.01.2011 setting aside the impugned order of recovery. The recovery order was quashed and the writ petition was allowed to the extent indicated therein. Now the present writ petition has been filed, in pursuance of the recovery order passed by the second respondent and the present writ petition has been filed by the writ petitioner to restore the last drawn pay received by the petitioner on the date of his retirement on 31.12.2005 and to revise the monetary benefits.

6. The learned Special Government Pleader appearing for the respondents 1 and 3 submitted that the writ petitioner had already filed a writ petition in W.P.No.15690 of 2008 and the same was allowed, and he has given up his claim to the restoration of pay scale and has confined his challenge to the impugned order of recovery. Now, the writ petitioner sought for the same relief as in W.P.No.15690 of 2008, which may not be entertained by this Court.

7. By considering the aforesaid submissions of the parties concerned and considering the facts and circumstances of the case, it is seen that in the proceedings of the second respondent, restoration of last drawn scale of pay was considered as well as recovery proceedings were issued and during the course of his arguments, it was conceded by the learned counsel for the petitioner that the writ petitioner has given up challenging the aforesaid restoration of the last drawn scale of pay, but adjudicated only with regard to the recovery proceedings. Therefore, the present writ petition cannot be adjudicated for the very same cause of action as in the earlier writ petition and consequently, no relief can be provided to the writ petitioner herein and the same is liable to be rejected.



8. Accordingly, the writ petition shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

msm

To

1. The Director of Public Health
And Preventive Medicine,
Anna Salai (D.M.S., Compound),
Chennai-6.
2. The Accountant General (A&E),
Office of the Principal Accountant General,
Teynampet, Chennai - 18.
3. The Deputy Director of Health Services,
Thanjavur.

+1 cc to Mr.R.Prem Narayan Advocate sr9456
+1 cc to Mr.V.Vijay Shankar Advocate sr9764
+1 cc to M/s.Government Pleader High Court Madras
sr 10847

W.P.No.12017 of 2013

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