

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.28100 OF 2013

M.Devaraj

.. Petitioner

- Vs -

1. The District Collector
Vellore District, Vellore.

2. The Commissioner
Arcot Panchayat Union
Arcot, Vellore District.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent in Na. Ka. No.1608/2009/PG1 dated 31.7.2013 and quash the same and further direct the respondents to settle the recovery amount of Rs.6373/- and to pay full salary after regulating the period of suspension from 20.2.07 to 16.4.07 and 30.9.09 to 30.3.10 including sanction of Special Grade pay on completion of 20 years of service and also settlement of all retirement benefits with interest at 12% p.a.

For Petitioner : Mr. S.Kamadevan

For Respondents: Mr. S.Thangavel, Spl. GP

ORDER

It is the case of the petitioner the he joined as Noon Meal Organizer in the 2nd respondent Panchayat Union on 10.9.1984. After completing 28 years of service, the petitioner attained the age of superannuation and allowed to retire from service on 31.1.13. While in service, an audit objection was raised with regard to excessive expenses incurred in the noon meal centre and without issuing any notice, order of recovery of a sum of Rs.6373/- was passed and recovery was also effected. The audit objections were rectified and cleared and inspite of the said clearance, the amount recovered from the petitioner was not refunded inspite of requests made by the petitioner.

2. It is the further case of the petitioner that he was placed under suspension by proceedings dated 20.2.07 of the 2nd respondent. In this background, W.P. No.7330/07 was filed challenging the order of suspension in which interim order was

granted by this Court. Though the petitioner was placed under suspension, however, no disciplinary proceedings were initiated. Once again the petitioner was placed under suspension on 15.9.09 against which W.P. No.20263/09 was filed. A charge memo was issued and this Court, in the above writ petition directed the respondents to complete the disciplinary proceedings with the time frame fixed. In view of the said orders, the disciplinary proceedings were not taken up and the petitioner was reinstated in service. It is the further case of the petitioner that inspite of his reinstatement, he was not paid the full salary during the suspension period and that the period of suspension was also not regularised. Further, the petitioner was not also provided with the special grade pay on completion of 20 years of service. Inspite of representation, since no orders were passed, the petitioner filed W.P. No.10102/13 in which the court directed to consider the representation of the petitioner within the time frame fixed. Inspite of the said orders, it is the case of the petitioner that he has not been granted the service benefits, as also the suspension period having not been regularised and the petitioner having not been paid the special grade pay on completion of 20 years, the present petition has been filed.

3. Learned counsel appearing for the petitioner submitted that though the petitioner was suspended twice, however, no disciplinary proceedings were initiated by the petitioner and in such a backdrop, the petitioner is entitled to have the said period regularised for the purpose of counting his service. It is further submitted by the learned counsel for the petitioner that the petitioner has not been paid the special grade pay on completion of 20 years service and, therefore, this Court may direct the respondents to pass appropriate orders regularising the service of the petitioner as also paying the special grade pay.

4. Per contra, learned Special Government Pleader appearing for the respondents submit that the amount recovered was towards the excessive expenses incurred by the petitioner, which is based on audit objection and, therefore, the said amount cannot be repaid back to the petitioner. It is further submitted by the learned Special Government Pleader that the petitioner has already been paid the special grade pay on completion of 20 years of service. However, insofar as the regularisation of period of suspension, learned Special Government Pleader fairly conceded that there being no disciplinary proceeding taken against the petitioner, the petitioner is entitled to have the said period regularised. However, as 50% of pay was paid as subsistence allowance during the said period, this Court may pass appropriate orders to take into account the 50% pay, while calculating the benefits to be paid to the petitioner.

5. This Court heard the learned counsel appearing on either side and perused the materials available on record.

6. The facts in issue are not in dispute, so also the suspension of the petitioner and the payment made to the petitioner during the period of suspension. It is also not in dispute that after retirement, the petitioner made representation for payment of certain benefits and this Court had passed orders to consider the said representation. Pursuant to the said direction, it is fairly conceded by the respondents that certain amounts have been paid to the petitioner and that during the period of suspension, the petitioner was also paid 50% of the salary as subsistence allowance. It is also borne out by record, which is also not in dispute that no disciplinary proceedings were abandoned and the petitioner was allowed to retire from service. Such being the factual position, there being no disciplinary proceedings against the petitioner, the period of suspension of the petitioner from 20.2.07 to 16.4.07 and 30.9.09 to 30.3.10 ought to be regularised for the purpose of calculating the length of service of the petitioner. The relief of regularisation sought for by the petitioner deserves to be sustained. However, the other reliefs sought for having already been granted, no further order needs to be passed for the said reliefs.

7. For the reasons aforesaid, this writ petition is disposed of directing the respondents to regularise the service of the petitioner from 20.2.07 to 16.4.07 and 30.9.09 to 30.3.10 and accordingly calculate the length of service of the petitioner for the purpose of payment of monetary and other pensionary benefits. The respondents shall adjust the amounts paid towards subsistence allowance to the petitioner during the period of suspension while calculating and paying the monetary and other pensionary and retirement benefits to the petitioner.

8. This writ petition is disposed of with the aforesaid observation and direction. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

GLN

To

1. The District Collector
Vellore District, Vellore.

2. The Commissioner
Arcot Panchayat Union
Arcot, Vellore District.

+1cc to Government Pleader, High Court, Madras SR.No.25742

W.P. NO. 28100 OF 2013

MR (CO)
GMY (17/08/2020)



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