

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23172 of 2014

K.Lakshmi

... Petitioner

Vs.

- 1.The Commissioner of Civil Supplies and
Consumer Protection Department,
Chepauk,
Chennai - 600 005.
- 2.The Deputy Commissioner of Civil Supplies - I
Chepauk,
Chennai - 600 005.
- 3.The Accountant General Officer,
General Provident Fund Account Office
Chennai - 600 018.
- 4.The Pay Pension Officer,
DPI Compound, College Road,
Chennai - 600 006.

....Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the entire records relating to the impugned order passed by the second respondent in his proceedings Na.Da.No.Sa3/26195/2012, dated 20.03.2014 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.S.Thangavel for R1, R2 and R4
Special Government Pleader
Mr.V.Vijay Shankar for R3

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the entire records relating to the impugned order passed by the second respondent in his proceedings Na.Da.No.Sa3/26195/2012, dated 20.03.2014 and to quash the same.

2.The case of the petitioner is that the petitioner was appointed as Typist on 10.06.1976 in the Panchayat Union Office, Thandrampet, Tiruvannamalai District through the Tamil Nadu Public Service Commission and was transferred to Rehabilitation Department in the year 1977. The petitioner was thereafter absorbed in the first respondent department of Civil Supplies as Selection Grade Typist and was promoted as Grade - I Typist in the year 2000.

3.It is the further case of the petitioner that during the year 2003, one C.Rajam claimed seniority than the petitioner and that was considered by the respondents and the said C.Rajam was placed before the petitioner and that order was passed in the year 2011. Thereafter, the second respondent passed the impugned order dated 20.03.2014 ordering recovery of alleged excess salary disbursed to the petitioner from 12.12.2000 to 28.02.2011 i.e., Rs.42,558/-. Hence, this writ petition.

4.The learned counsel appearing for the petitioner would submit that the petitioner was promoted as Grade - I Typist during the year 2000 and one C.Rajam claimed seniority than the petitioner during the year 2003. Thereafter the impugned was passed during the year 2014 and that too without issuing any notice to the petitioner. Hence, the impugned order is liable to be quashed. Accordingly, he prayed for allowing the writ petition.

5.The learned Special Government Pleader would submit that the petitioner ought to have been granted promotion as Grade I Typist only during the year 2004, however, she was granted promotion during the year 2000. Hence, the date of promotion was changed and the impugned order of recovery was passed. However, he fairly conceded that no show cause notice was issued to the petitioner before passing of the impugned order.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.The petitioner was promoted as Grade - I Typist in the year 2000. Thereafter during the year 2003, one C.Rajam claimed seniority than the petitioner and her claim was considered by the respondents and she was placed before the petitioner in the year 2011. Thereafter, the second respondent passed the impugned order dated 20.03.2014.

8.Though the respondents contend that the petitioner ought to have been granted promotion as Grade I Typist only during the year 2004, however, she was granted promotion during the year 2000, it is not their case that the petitioner secured the

promotion by way of suppression of facts. It is the mistake committed by the respondents for which the petitioner cannot be held responsible. Further, the petitioner has also performed and received the salary in the promotional post.

9. Similar issue was dealt by the Hon'ble Apex Court. It is useful to extract hereunder the relevant portions of the decision of the Hon'ble Apex Court reported in (2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others):

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

19. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed

by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."

10.Hence, applying the ratio laid down in the decision cited supra, this Court is inclined to set aside the order impugned in this writ petition.

11.This writ petition is allowed. The impugned order dated 20.03.2014 passed by the second respondent is set aside. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pri

To

- 1.The Commissioner of Civil Supplies and Consumer Protection Department,
Chepauk,
Chennai - 600 005.
 - 2.The Deputy Commissioner of Civil Supplies - I
Chepauk,
Chennai - 600 005.
 - 3.The Accountant General Officer,
General Provident Fund Account Office
Chennai - 600 018.
 - 4.The Pay Pension Officer,
DPI Compound, College Road,
Chennai - 600 006.
- +1 CC to Mr.V.Vijay Shankar,Advocate sr 42909.

W.P.No.23172 of 2014

PP(CO)
SP(19/01/2021)