

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
01.10.2020	23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16762 of 2007
in O.A.No.3697 of 2003

S.Shanmugavelu

... Petitioner

-vs-

1.The District Collector,
Collectorate,
Trichirapalli.

2.Accountant General (Audit) - I,
Periyar E.V.R.Building,
474, Anna Salai,
Nandanam, Chennai - 600 035.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in respect of the order in Na.Ka.Tha.2 No:603/98 dated 13.11.2002 issued by the 1st respondent based on A.G.(au) 1/ISCV/V 23-14/95-96/630 dated 25.09.2002, quash the same and consequently, direct the respondents to implement the G.O.No.262/Rural Development (E4) dated 24.05.2001.

For Petitioner : Mr.R.Saseetharan
For R1 : Mr.K.Magesh
Spl. Govt. Pleader
For R2 : Mr.V.Vijayashankar

O R D E R

The Writ Petition has been filed, challenging the orders of the respondents dated 25.09.2002 and 13.11.2002, by which the amount paid in excess was ordered to be recovered from the petitioner. The petitioner also sought a direction to the respondents to implement the G.O.No.262/Rural Development (E4) dated 24.05.2001.

2. It was the case of the petitioner that he was appointed as Typist in the Secretariat Service on 10.10.1986 and was promoted as Assistant with effect from 30.04.1991 and subsequently, as Assistant Section Officer on 14.11.1994. The petitioner, on his own request, was transferred to Tamil Nadu Ministerial Service in Rural Development Unit, Trichirappalli

District and joined duty as Junior Assistant, Thanthoni Panchayat Union on 05.04.1995. It was further case of the petitioner that though his pay scale was fixed as Rs.975-25-1150-30-1600, subsequently, the 1st respondent passed an order in Na.Ka.No.2/23364/97-1 dated 23.04.1998, stating that the basic pay fixed as Rs.1630/- was wrong and it would be only Rs.1210/- as per the objection raised by the 2nd respondent on the basis of the Audit Objection. It was also the case of the petitioner that aggrieved by the said order, the petitioner preferred a Statutory Appeal on 14.05.1993 before the Director of Rural Development, Saidapet, Chennai for pay protection and though the said appeal was dismissed, in the revision before the Government, a Government Order dated 24.05.2001 was passed in favour of the petitioner. Shockingly, the 2nd respondent, all of a sudden, ordered for recovery of excess amount, stating that the aforesaid Government Order 24.05.2001 is incorrect, based on which, the 1st respondent also sought to recover the amount from the petitioner. Against such recovery, the petitioner is before this Court.

3. The 1st respondent has filed a counter affidavit, inter alia stating as follows:

i) The petitioner, on his own volition, was posted at Thanthoni Panchayat Union as Junior Assistant in the time scale of Rs.975-25-1150-30-1460 and he joined the post on the forenoon of 05.04.1995 in the said Panchayat and at that time, he was drawing the pay of Rs.1640/- as per Last Pay Certificate given by the Adi Dravidar and Tribal Welfare Department, Chennai and his pay was regularized in the time scale of pay Rs.975-25-1150-30-1460;

ii) It was stated that as per the Government Letters dated 18.08.1981 and 15.03.1975, when a Government Servant reverted to work in lower post, his pay has to be fixed as if he had continued in lower post prior to promotion. Though the petitioner worked as Assistant Section Officer with effect from 14.11.1994 and was posted as Junior Assistant in Rural Development with effect from 05.04.1995 on the request of the individual and therefore, it could be assumed that the individual accepted to work from higher to lower post with effect from 05.04.1995 and he cannot claim pay protection in the lower post, which is against the Government Rules;

iii) It was also stated that as the petitioner was reverted to Lower Post from higher post on 05.04.1995, if protection of pay is ordered by the Government, the promotion after 05.04.1995, viz., Assistant on 12.01.1998 and Deputy B.D.O. on 17.11.2008, pay cannot be fixed, since the Assistant and Deputy B.D.O. posts are below the post of Assistant Section Officer. It was prayed that since the proceedings of the respondents are not against the Government Order, no interference is warranted on the impugned orders.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. It is not in dispute that in case of request transfer, the seniority will not be affected, if the person is placed in the same post and in case the person is not posted in the same place, he will be the senior most in the category. In the present case on hand, the petitioner worked as Assistant Section Officer and transferred as Junior Assistant. It is no doubt true that F.R.22 would help the petitioner provided he is in the same cadre or placed in a better position. However, in this case, since the petitioner requested for a lower post, the scale of pay applicable to the post of Junior Assistant alone will be granted. Merely because the Government Order has given him the benefit, it would not entitle him to claim pay protection.

6. Learned counsel for the petitioner has relied upon the judgment of the Apex Court, especially Paragraph Nos.4 and 6 of the judgment in the case of Comptroller and Auditor General of India and Others vs. Farid Sattar, reported in (2000) 4 SCC 13, wherein it has been held as follows:

"4. The relevant terms and conditions of unilateral transfer, as accepted by the respondent, are extracted below:

"The transfer mil be not in public interest and as such he will not be entitled to any joining time, joining time pay or T.A.

He will be assigned junior to the junior most Accountant on the date he reports for duty in this office for all intents and purposes.

He shall have to submit his technical resignation from the post of Senior Accountant in the Office of the A.G.(A & E), West Bengal, Calcutta, in order to join Accountant's post in the Office of the Senior Dy. Accountant General (A & E), Sikkim, Gangtok.

He shall have no right to seek re-transfer to his parent office or to any other office.

On unilateral transfer he is required to pass whatever departmental examination as prescribed by the relevant recruitment rules.

This pay shall be regulated in accordance with the relevant rules in force in his U.T. as Accountant"

7. Per contra, learned counsel for the respondents, quoting the very same judgment (supra), contended that the entire clause

in Paragraph No.4 has to be read in conjunction with Paragraph No.5, which reads as follows:

"5. It is no doubt true that unilateral transfer which is said to be coined by the appellants is not contemplated under the Fundamental Rules. What is contemplated is the transfer on written request under Fundamental Rule 15. But if such a transfer is not contemplated under the Fundamental Rule., it is not necessarily to be governed by the Fundamental Rule, but by the terms and conditions of such unilateral transfer. Fundamental Rule 22 (1) (a) (2) provides that, when an employee is transferred to a new post, which does not involve assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis. Thus F.R.22(1) (a) (2) would be applicable where there is an ordinary transfer which is not by way of reversion to the lower post and in such a case, the pay of an employee on transfer to a new post has to be protected. Fundamental Rule 22(1) (a) (3) is applicable where an employee is transferred to a new post on his own request under sub-rule (a) of Rule 15, and further in such a transfer no reversion is involved. In such a transfer to a new post if the maximum pay in the time-scale of the transferred post is lower than his pay in respect of the old post held regularly, he is required to draw that maximum as his initial pay. For illustration - an employee working in a pay scale of Rs. 1400-2600 was drawing pay at the stage of Rs. 2040 and he is transferred on his own request not involving reversion to a post which carries pay scale of Rs. 1200-2040. in such a case. the maximum pay which he was drawing viz... Rs. 2040 has to be protected on the transferred post which carries a pay scale of Rs. 1200-2040.'-. It is not the case here. Here. what we find is that the respondent on his own volition sought transfer on certain terms and conditions accepted by him. The terms and conditions of unilateral transfer are very clear and there is no ambiguity in it. The terms and conditions provided that the respondent on transfer would be appointed to a post which is lower to the post which he was occupying prior to his transfer and he was also required to tender technical resignation from the post which he was holding with a view to join the lower post as a direct recruit and was to rank

junior to junior most employee in the cadre of Accountant. He was further required to forego any benefit of passing any departmental examination while working in the higher post. In such a situation, the pay of the respondent had to be fixed with reference to the lower pay scale and not with reference to the pay drawn by him in the higher post since he was to be considered as a direct recruit in the lower post.

It was further contended that Paragraph No.4 cannot be read in isolation and that the petitioner has not sought for transfer to the same post in the same place, but to a lower post, which can be construed as a request transfer only. Hence, pay protection cannot be granted.

8. In reply, it was stated by the learned counsel for the petitioner that there was no undertaking given by the petitioner that he would forego the benefits already received and hence, the pay that he was drawing has to be protected till he reaches the pay which he would draw in the post of Assistant.

9. It is no doubt true that in case the petitioner has merely requested for transfer to another place, he can be placed at the bottom of seniority list of Assistant or kept in Sl.No.1 in the Junior Assistant post for want of vacancy in the post of Assistant and in that case, certainly, he is entitled to get pay protection. In this case, the petitioner has sought for transfer to the post of Junior Assistant and not to the post of Assistant. In the considered opinion of this Court, there is force in the contention of the respondents that the transfer was effected especially in the cadre of lower post, only on the request of the individual / petitioner and therefore, the relief sought for by the petitioner cannot be granted and the orders impugned herein are sustainable, warranting no interference by this Court.

10. Accordingly, the Writ Petition, being devoid of merits, is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

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Sub Assistant Registrar

To:

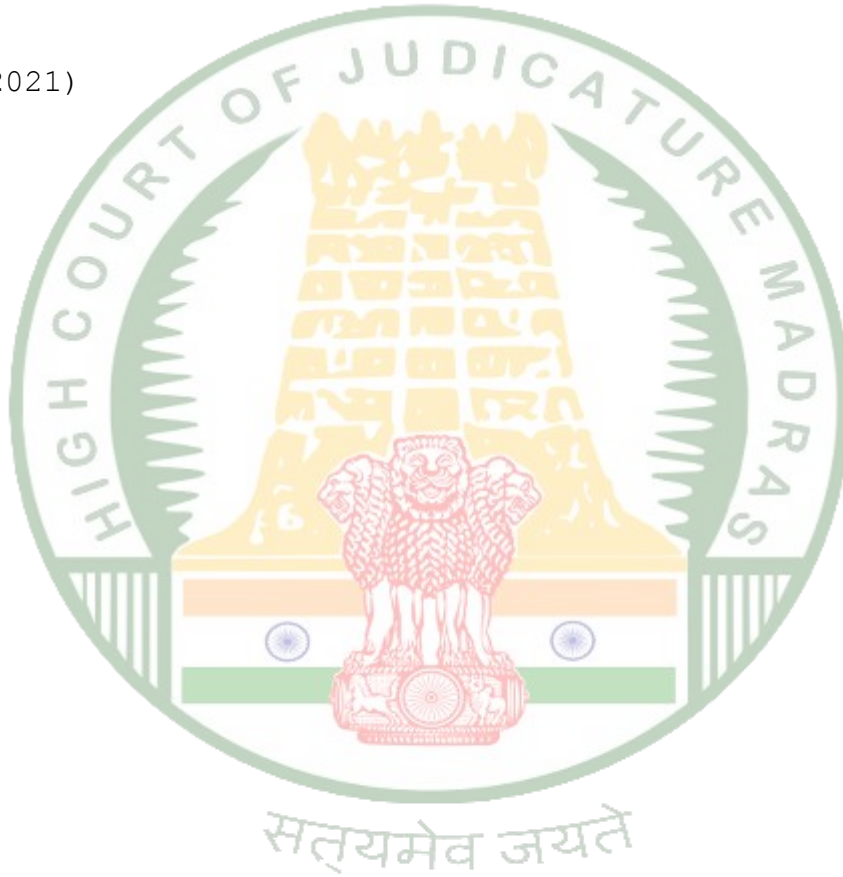
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+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.42908
+1cc to the Government Pleader, S.R.No.43014

PRE-DELIVERY ORDER IN
W.P.No.16762 of 2007

ad(CO)
rv(21/01/2021)



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