BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.08.2020
DELIVERED ON : 14.09.2020
CORAM:
THE HONOURABLE **MR.JUSTICE RMT. TEEKAA RAMAN**
W.P.(MD)No.14861 of 2013
M.P.(MD)No.2 of 2013

R.Narayanasamy ... Petitioner

Vs.

1.The Deputy Chief Internal Audit Officer,
Board Office, Audit Branch,
M.K.R.R. Mazhigai First Floor,
144, Anna Salai,
Chennai-600 002.

2.The Superintending Engineer,
Madurai Electricity Distribution Circle/Metro,
K.Pudur, Madurai-625 007. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order of the first respondent in Letter No.040380/796/F14/F143/2010 dated 25.10.2010 and the consequential order of the second respondent in Ku.A.No.Me.Po.Va/Peru/NIBil/U4 Eruthinilaipayangal /A.No.258/2011 dated 06.02.2011 and quash the same and consequently direct the respondents to repay the amount of Rs.1,97,093/- with interest recovered from the petitioner based on the impugned orders.

For Petitioner : Mr.M.Kannan
For Respondents : Mr.T.Sakthi kumaran, Standing Counsel.

ORDER

The petitioner has filed the present writ petition seeking to quash the proceedings of the first and second respondents in memo dated 25.10.2010 and 06.02.2011 and consequently direct the respondents to repay the amount of Rs.1,97,093/- (with interest) recovered from him.

2.The service matrix of the petitioner that are necessary for the determination of this writ petition are us under:-

2(a)initially the petitioner was appointed as attender in the Electrical Division of Madurai Corporation from 18.09.1974 and subsequently was promoted as Record Clerk on 16.08.1975 FN.

2(b)vide G.O.Ms.No.156 dated 10.06.1994 the Government inter-alia decided in principal to take over the five Corporations/Municipal Electrical Undertaking (viz) Coimbatore, Madurai, Thanjavur, Pollachi and Karur.

2(c)The Tamil Nadu Electricity Board evolved proposal for absorbing the said Madurai Corporation undertaking employees in various categories of the Board.

2(d)The Government approved the said proposal subject to the condition mentioned in Para 4 (1) of the G.O.Ms.675, dated 22.09.1993. In accordance with the terms of G.O. cited above, the Tamil Nadu Electricity Board ordered that all the 592 employees of the Madurai Corporation Electrical undertaking be regularly absorbed in various categories from 30.04.1995.

3.The petitioner was one among the 18 Record Clerks who have joined into Boards service from Madurai Corporation Electrical undertaking. As per Boards norms, the sanction of Record Clerk posts for section officers is not permissible and the Record Clerk is sanctioned only for the central office of the circles. Out of 18 Record Clerk absorbed by the Board from Madurai Corporation Electrical Undertaking, 9 Record Clerks who are employed in section officers, where the post were not permissible, represented for conversion as Commercial Assistant. The Board has decided to consider the request of 9 Record Clerks and conversion of the post of 9 Record Clerks as Commercial Assistants and ordered by abolishing the post of Record Clerk including 5 vacant posts and to accord relaxation of rules relating to qualification in favour of the Record Clerks who did not possess the required qualification for the said post.

4.The Union/Association have been representing that through the selection grade scheme is existing in the Board from the year 1979, there is wide spread stagnation in many categories and that a time bound promotion policy has to be evolved or a special grade scheme to be introduced. In consideration of the above demand Tamil Nadu Electricity Board has considered the demands put forth by the unions and passed order dated 08.02.2006 as submitted below:

"Employees who have completed 20 years of total regular service in the ordinary grade post and selection grade post put together and stagnating without promotion shall become eligible for the Special grade with effect from 01.12.2002. The movement to Selection grade / Special Grade shall not be a bar for promotion to higher post against the regular vacancies."

5.The petitioner got retired from service on 30.06.2010. The Pension sanction proposal along with the service book of the petitioner was submitted to the Chief Internal Audit Officer by the second respondent which was reviewed. On review of the service book the respondent's Audit Branch in respect of the petitioner, if it was noticed that the official has joined as Commissioner Assistant on 19.09.2002 on conversion whereas the Special Grade movement has been sanctioned to him within 3 months viz., with effect from 01.12.2002 taking into account the service rendered in the post of Record Clerk which is not correct. Since he has joined as Commercial Assistant on 19.09.2002, he is not eligible for Special Grade. Hence, the special Grade sanctioned to him was ordered to be withdrawn by the Audit Branch and revision of pay with effect from 01.12.2002 and subsequent increment shall be regulated till the date of retirement. Aggrieved against that order, this writ petition is filed.

6.The learned counsel appearing for the petition's submitted that the petitioner was originally worked as a Record Clerk in the Madurai Corporation. On amalgamation with Tamil Nadu Electricity Board his post was re-desingated as Commercial Assistant and the salary was refixed. Subsequently, he retired from service on 30.06.2010 and thereafter, based on the audit objection the order of recovery was passed on 25.10.2010 alleging that the salary of the special grade pay has been paid over and above the eligible salary.

7.Per contra, the standing counsel for the respondents contended that from the date of absorbing i.e., from 30.04.1995, all the employees of the erstwhile Madurai Corporation Electrical undertaking were absorbed as Board and they are not entitled for any rights and the petition's will be covered by the rules and regulations of the Government undertaking TANGEDCO as the petitioner joined as Commercial Assistant on conversion from Record Clerk and without 20 years service, the selection grade cannot be granted.

8.Heard the learned counsel on either side.

9.The petitioner retired as Line Inspector on 30.06.2010. On the date of retirement, the net pension was fixed as Rs.7,220/-. Gratuity fixed as Rs.4,82,477/-. As per impugned order, the pension is revised as Rs.6,437/- instead of Rs. 7,220/- and gratuity was revised as Rs.4,30,139/- instead of Rs.4,82,477/-, hence, as per impugned order, a recovery of excess gratuity of Rs.52,338/- and excess salary of Rs.1,44,755/- was ordered. This impugned, viz, the order of recovery is under challenge.

10.Admittedly, by virtue of the take over by the Tamil Nadu Electricity Board, under B.P.(F.B.)No.31, dated 18.08.1997, the electricity employees of the Madurai Corporation Electrical Undertaking, including 18 Record Clerks as regular employees of the Board, with effect from 30.04.1995 and from the date onwards they are bound by the rules and regulations of the Tamil Nadu Electricity Board under TANGEDCO.

11.It is seen from the above G.Os., the petitioner is not eligible for the Special Grade post as he had joined as Commercial Assistant only on 19.09.2002 on conversion from Record Clerk from erstwhile employment and the special grade is given within 3 months, viz., with effect from 01.12.2002 and the 20 years of service he had put in the earlier post cannot be considered for sanctioning special grade in the converted post. Furthermore, the petitioner by his option only has got converted to the post of Commercial Assistant, thereby he could get promotion to the higher cadre. In fact, the petitioner has also been given promotion to the higher cadre as Line Inspector and has also got retired in the said post as could be seen from Service Records. Furthermore, the petitioner cannot claim for the cumulation of period worked in the Madurai Corporation Electrical Undertaking before his conversion and thereby getting promotion to higher cadre. It is seen that the revised pay fixation order was communicated to the petitioner. The pension and the gratuity have also been admitted after the revised pay fixation. Thus, the petitioner has no rights to claim the Special Grade as he is not eligible and thus audit objection raised by the Government appears to be just and proper and by virtue of the provision in MFC r/w Tamil Nadu Pension Rule 70(1) & (2) along with above mentioned G.Os.

12.I find that the impugned order passed by the respondent cannot be termed as erroneous. On perusal of the service book in respect of the petitioner, he as Line Inspector retired on 30.06.2010, it is noticed that the special grade movement has been sanctioned to him with effect from 01.12.2002 taking into account the services rendered in the post of Record Clerk which is not correct. Since he has joined as Commercial Assistant only on 19.09.2002 he is not eligible for special grade on 01.12.2002. Hence, necessarily, the special grade sanctioned to him may be withdrawn and pay may be revised with effect from 01.12.2002 and subsequent increment will be regulated till the date of retirement.

13.On the point of recovery, an excess amount paid, the Hon'ble Supreme Court in ***State of Punjab Vs.Rafiq Masih [(2015) 4 SCC 334]*** has held as follows:

> *"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 recovery".

14. The said decision has been followed by the Division Bench ***in W.A(MD).No.1154 of 2018 dated 25.09.2018 in the Commissioner, Madurai Corporation .Vs. M.H.Sekar*** wherein Their Lordship have held that " this is for the reason an employee who is at the bottom level finds it difficult to face the financial situation. Therefore, the aforesaid decision cannot be applied to the case on hand".

15.As observed earlier, the order of grant of selection grade was passed on 29.09.2007 and the petitioner was retired from service on 30.06.2010. The order of withdrawal of grand of Special grade was passed on 25.10.2010 and consequently, the order of recovery is passed on 09.02.2011. In other words, the order of withdrawal of special grade is passed within three years and on the factual matrix of this case, the case of the petitioner does not fall under Clause (iii) of para 18 stated by the Hon'ble Apex Court in ***State of Punjab Vs.Rafiq Masih [(2015) 4 SCC 334].***

16.The order of recovery was passed in the year 2011. The Writ Petition was filed on 04.09.2013, by the time, the substantial amount of recovery has also been made. After re-fixation of the salary as per correct calculation, the pension of the petitioner was reduced from Rs.7,220/- to 6,437/- and hence, I find that the case of the petitioner having regard to his salary does fall under Clause-5 in para 18 of the ***Rafiq case (cited supra)*** and hence, the order of recovery cannot be enforced against the petitioner. Thus, I find that the respondent has properly calculated the salary by withdrawing special grade salary, which was wrongly given and the excess of salary of Rs.1,44,755/- out of which some amount had already been recovered and the revised pension has to be collected based upon the re-fixation of the revised salary and the respondents were acted in a proper manner by withdrawing special grade salary and excess pay was also revised.

17.Considering the nature of employment of the petitioner herein and the fact-situation stated in ***Rafiq case (cited supra),*** I am inclined to pass the following order, in the interest of justice.

(i). As the writ petition has been filed in the year 2013 while the recovery order passed in the year of 2011 substantial amount is already been recovered for the wrong fixation of salary in the pension and the gratuity, the same need not be refunded. In other words, the amount already recovered need not be refunded by the official respondent.

(ii). In respect of the balance of the amount it need not be recovered from the petitioner for the future. However, in respect of the said balance of the amount, officer shall be responsible for such a lapse and from him recovery proceedings has to be initiated as stated in the above said decision.

(iii). The petitioner is entitled to receive the pension based upon the revised pay of scale only for the forthcoming months and the interim order already granted shall stand vacated.

18.With these directions, this writ petition is partly allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

gns/msa

+1 CC to MR.M.KANNAN, Advocate (SR-17026[F] dated 16/09/2020)

Order Made in
W.P.(MD)No.14861 of 2013
14.09.2020

VB (18.09.2020) 6P 2C