IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NOS.38982 & 38983 OF 2002

P.Mahamani ... Petitioner in both WPs

.Vs.

1. State of Tamil Nadu,
   Rep. by the Secretary to Government,
   Industries Department,
   Fort St. George,
   Chennai – 600 009. ... 1st respondent in W.P.No.38982 of 2002

   ... 2nd respondent in W.P.No.38983 of 2002
2. State of Tamil Nadu,
   Rep. by the Additional Secretary to Government,
   Finance (BPE) Department,
   Fort St. George,
   Chennai – 600 009. ... 1st respondent in W.P.No.38983 of 2002
3. Tamil Nadu Magnesite Limited,
   (A Govt of Tamil Nadu undertaking),
   Rep. by its Managing Director,
   5/53, Omalur Main Road
   Jagir Ammapalayam Post,
   Salem – 636 302. ... 2nd respondent in W.P. No.38982 of 2002

   ...3rd respondent in W.P.No.38983 of 2002

PRAYER IN W.P.NO.38982 OF 2002:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the Letter No.22525/MME.2/98-3, Industries Department, dated 12.02.1999 on the file of the 1st respondent and the consequential orders bearing Nos.Ref:1(2)/P&A/1103/99-2000, dated 07.05.1999 and Ref:1(2)/P & A/1302/99-2000, dated 13.05.1999 on the file of the

2nd respondent and to quash the same and consequently, to direct the respondents to restore the Order bearing Ref:1(2)/9107/89-90, dated 27.09.1989, refund the amount deducted from the Petitioner's salary, fix his revised Pay Scale as per the 6th Pay Commission Report at Rs.16,400-450-20,000/- w.e.f. 01.01.1996 and pay all the benefits arising therefrom to him.

PRAYER IN W.P.NO.38983 OF 2002:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the order bearing G.O.Ms.No.200, Finance (BPE) Department, dated 06.05.1998 on the file of the 1st respondent and to quash Clause -(vii) of the said G.O. and consequently, direct the respondents to revise and fix petitioners Pay scale in the post of Secretary-cum-General Manager (Finance) in the 3rd respondent as recommended in the 6th pay Commission Report at Rs.16,400-450-20,000/- and pay all the monetary benefits arising therefrom.

For Petitioner : Mr.TM.Naveen in both WPs

For Respondents : Mr.C.Selvaraj,
Government Advocate for R1 & R2
in W.P.No.38983 of 2002 and
for R1 in W.P.No.38982 of 2002

Ms.Jasmine Padma
For Ms.K.Bhuvaneswari for R3
in W.P.No.38983 of 2002 and
for R2 in W.P.No.38982 of 2002

COMMON ORDER

These two Writ Petitions have been filed by an employee who had joined the services of the third respondent, a Government of Tamil Nadu undertaking, i.e., Tamil Nadu Magnesite Limited (R3) in W.P.No.38983 of 2002. On 05.03.1980, the petitioner was appointed as a Financial Controller-cum-Secretary in the pay scale of Rs.1600-75-1750-100-2250 along with usual allowances. The petitioner joined duty on 02.05.1980 and has been employed therein till his resignation in the year 2003.

2. The challenge in W.P.No.38982 of 2002 is to orders passed by the first respondent dated 12.02.1999, 07.05.1999 and 13.05.1999, restricting the scale of pay with effect from 01.07.1997 under order dated 12.02.1999. The petitioner who was entitled to an enhancement of pay in the scale of 5100-150-5700

was relegated, by way of the aforesaid order to the scale of pay 4500-150-5700 with effect from 01.06.1988. Simultaneous therewith, an order was passed directing the recovery of amounts allegedly paid in excess, in instalments. Consequent upon the revision of scale of pay with effect from 01.06.1988 revisions were made to the scales of pay fixed for subsequent periods as well.

3. In W.P.No.38983 of 2002, the petitioner challenges G.O.Ms.No.200 (BPE) Department, dated 06.05.1998 (G.O./G.O. in question), specifically Clause 7 thereof. The Writ Petition is filed on the basis that it is Clause 7 of the aforesaid G.O., on account of which the scale of pay in the petitioner's case was refixed on 12.02.1999. A perusal of the impugned orders however, do not reflect anywhere that it is the aforesaid G.O. that is the basis of the pay refixation though there a passing reference to the Vth Pay Commission recommendations in order dated 12.02.1999. Neither the pleadings anywhere contain any explanation nor reasoning for the re-fixation effected under order dated 12.02.1999.

4. Be that as it may, detailed submissions have been heard in regard to the challenge to the G.O., specifically Clause 7 thereof, and I recapitulate the same briefly. The petitioner challenges the re-fixation on the following grounds:

i) That the impugned orders of re-fixation have been passed without prior opportunity of hearing which vitiate the same.

ii) The re-fixation has the effect of reducing the rank as well as the monetary benefits of the petitioner and are contrary to the terms of his service, particularly since there have been no allegations on charges laid against him in regard to the rendition of the services.

iii) Impugned Clause 7 of the G.O. contains, as a pre-requisite, the requirement of a finding that the pay drawn by the employee in question is equal to the pay drawn by the Head of the Department, in this case the Managing Director.

iv) There is no such finding in the impugned order or in any of the communications exchanged and as such the pre-requisite conditional upon which Clause 7 of the G.O. would stand attracted to the petitioner's case, is not satisfied.

v) The petitioner is a permanent employee of R3 company, whereas the Managing Director is drawn from among the officers of the Indian Administrative Service (IAS) and vary in rank.

vi) The scales of pay of the Managing Director would depend upon the Rules that govern the pay of officers of the IAS whereas, the scale of pay of the petitioner is, and cannot be subject to the same fluctuations.

(vii) Lastly, and alternately, if at all the re-fixation were warranted and found to be in order, it could only have been given effect to prospectively and not retrospectively.

5. No response of any sort whatsoever has been put forth from the respondent in regard to the above contentions. The counter filed by the first and second respondents, being the State of Tamil Nadu represented the Secretary and by Additional Secretary (R1 and R2) are totally silent in regard to the aforesaid averments. The counter merely repeats the contents of Clause 7 of the G.O and in fact, and as I have pointed earlier, reference to Clause 7 is itself unnecessary in the circumstances of this case.

6. The Hon'ble Supreme Court, in the case of Asha V. Pt.B.D.Sharma University of Health Sciences and others ((2012) 7 SCC 389) dealing with the law of pleadings reiterates that an averment made by a party to litigation is expected to be specifically denied by the replying party and if there were no such specific denial, then such averment is deemed to stand admitted.

7. In the present matter, it is the fulcrum of the petitioner's case that clause 7 of the G.O. in question shall not be applicable to his case and, assuming that, that is the basis upon which the impugned orders have been passed and recovery effected, it was incumbent upon the respondents to justify both the invocation of the G.O. in question and the specific clause thereunder. Specifically, the argument that the pre-condition set out in clause 7 of the G.O. has not been satisfied, should have been met. The counter filed in the present case is bland and repetitive to say the least. There is absolutely no substance therein to explain the stand of the State as to why the G.O in question would apply to the petitioner or whether at all it would. Thus, in view of this glaring omission on the part of the respondents to make out a specific case in their defence, following the ratio of the judgment aforesaid, I would hold that this G.O. is not material to the facts and circumstances of the petitioner's case. Assuming that it is the G.O. in question that has been pressed into service, the pre-condition set out in clause 7 thereof has admittedly not been satisfied nor any of the other arguments been met.

8. I thus proceed to test the impugned orders upon the strength, and in the light of the averments that they contain. The impugned orders are extracted below in the interests of clarity and completion of narration:

Letter No.22525/MME2/98-3, Industries Department, Fort St. George, Chennai-9.

Dated 12.2.1999

From
Thiru M.S.Srinivasan, I.A.S.,
Secretary to Government

To
The Managing Director,
Tamilnadu Magnesite Limited,
5/53 Omalur Main Road,
Jagir Ammapalayam, Salem - 636 302.

Sub: Tamilnadu Magnesite Limited - Revision of scale of pay of certain officers - Revision of the scale of pay of the post of Secretary-cum-General Manager (Finance) – Regarding.

Ref:1. From the Joint Managing Director, TANMAG, Letter No.1(2)/5102/94-95, dt.15.8.1994

2. Your letter No.3(9)/4579/98-99, dt.29.8.1988 and 17.12.1998

I am directed to invite attention to the references cited and to state that the Government have among others examined the question of fixing the scale of pay for the post of Secretary-cum-General Manager (Finance), Tamilnadu Magnesite Limited (Vth Pay Commission), and to inform that your proposal for allowing the scale of pay of Rs.5100-150-5700 for the post of Secretary-cum-General Manager (Finance) has not been accepted by Government. The Government, accordingly, direct that the scale of pay for the post of Secretary-cum-General Manager (Finance) Tamilnadu Magnesite Limited be fixed in the scale of pay of Rs.4500-150-5700 with effect from 1,6.1988 and the excess payment paid to the individual may be recovered in easy instalments.

2. I am also directed to state that the orders regarding the revised scale of pay to be allowed for the post of Secretary-cum-General Manager (Finance) with effect from 1.1.1996 with reference to the scale

of pay fixed viz 4500-150-5700 will be issued separately.

Yours faithfully,

for Secretary to Government

9. Letter dated 07.05.1999 is addressed to the petitioner by R3 and states thus:

Ref: Govt.Lr.No. 22525/MME2/98-5, dt. 30.4.99

The Management is pleased to inform that your scale of pay has been revised as Rs.12000-375-16500 with an initial basic of Rs. 13,875/- p.m. w.e.f. 1.1.96 and revised as Rs.15000-400-18600 with an initial basic of Ra.15,000/-p.m. w.e.f. 10.12.96. However, monetary benefit on the revised pay scale will be paid w.e.f. 1.7.97 only.

The other terms and conditions of your appointment order shall remain unchanged.

M.D.

10. Subsequent letter dated 13.05.1999 is from R3 and puts the petitioner to notice about the proposed recovery to be effected in the following terms:

Ref: 1(2)/P&A/307/99-300

Sub: Review of revision of scale of pay – recovery of excess payment made w.e.f. 1.6.88 – re.

Ref:1.Govt.Lr.No 22525/MME.2/98-5, Ind. Dept., dt, 30.4.99

2. Our Letter No.1(2)/P&A/1103/99-2000,dt.7.5 99

In continuation of the above, Govt. vide letter first cited in the reference directed that the excess payment made to Thiru P. Mahamani due to the higher scale of pay allowed at Rs. 5100-5700 from 1.6.88 be recovered by way of adjustment in the arrear payment from 1.7.97.

Clarification has been sought from Govt. regarding the stage at which the basic pay of Thiru

P.Mahamani has to be fixed in the scale of pay of Rs.4500-150-5700 w.e.f. 1.6.88. On clarification from the Govt., recovery of excess payment already made and also the payment of arrears will be decided.

MANAGING DIRECTOR

11. Passing reference is made to the Report of the V pay Commission in rejecting the proposal of R3 for fixation of salary at the scale of Rs.5100-150-5700. The State further states that the salary is to be pegged at the scale of Rs.4500-150-5700, with effect from 01.06.1988 and that excess paid for the past period is liable to be recovered from the petitioner.

12. The proposal of R3 stood rejected vide impugned order dated 12.02.1999, though without any reference to the G.O in question or Clause 7 thereof. Needless to say, the impugned orders have had a debilitating effect upon the petitioner and proceed to retrospectively snatch benefits hitherto paid, towards services already rendered. Learned counsel for the petitioner confirms that full recovery has been effected towards the salary allegedly paid in excess from the years 1988 till 2003 when the petitioner resigned.

13. Even today, despite repeated probing, I am unable to cull out any reasoning or response, let alone an effective defence to justify the passing of the impugned orders, that too without hearing the petitioner. In light of the above discussion, the impugned orders have no legs to stand and are quashed.

14. This is an appropriate matter for the levy of costs upon the state for (i) having inflicted non-speaking orders upon the employee (ii) having done away with the principles of natural justice in toto (iii) for effecting recovery of salaries paid from various periods between 1999 to 2003, till date, thus depriving the petitioner of substantial capital.

15. The amounts recovered as excess payments shall be re-paid to the petitioner within a period of six (6) weeks from today and as a matter of compensation for the hardship caused as well as the loss of capital for the last more than 17 years, let the petitioner be paid a sum of Rs.1,00,000/- as compensation along with the amount to be refunded as aforesaid.

16. W.P.Nos.38982 of 2002 is allowed and the orders impugned therein are quashed. As regards the challenge to G.O.200 (BPE) Department, dated 06.05.1998 in W.P.No.38983 of

2002, I have noted at paragraph 4(iv) aforesaid that the pre-condition contained at Clause 7 of the G.O. thereof has not been satisfied in the case of the petitioner and at paragraphs 6 and 7 above that there is no negation of the facts as set forth by the petitioner, citing the judgement of the Supreme Court in the case of Asha (Supra) as well. Thus, the aforesaid G.O has no application to the petitioner and the prayer sought need not be considered. This Writ petition is closed in light of the aforesaid observation. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Industries Department,
Fort St. George,
Chennai - 600 009.

2. The Additional Secretary to Government,
State of Tamil Nadu,
Finance (BPE) Department,
Fort St. George,
Chennai - 600 009.

3. The Managing Director,
Tamil Nadu Magnesite Limited
(A Govt of Tamil Nadu undertaking),
5/53, Omalur Main Road,
Jagir Ammapalayam Post,
Salem - 636 302.

+1cc to Ms.K.Bhuvaneswari, Advocate, S.R.No.44671
+1cc to the Government Pleader, S.R.No.44882

W.P.NOS.38982 & 38983 OF 2002

PM(CO)
PBS/07/10/2021