



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.202

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.19401 of 2008

S.Raja Mohamed

... Petitioner

Vs

1. Senior Accounts Officer,
(Legal Cell), Office of the Accountant
General (Accounts and Entitlements),
Tamil Nadu, 361, Anna Salai, Chennai 18.
- 2 The Executive Engineer,
Cauvery Basin Sub Division,
P.W.D./WRO, Tanjore.
3. The Chief Engineer (General),
Public Works Department, Chepauk, Chennai 5.
4. The Secretary to Government of
Tamil Nadu, Public Works Department,
Fort St. George, Chennai 9.
- 5 The Accountant General of Tamil Nadu,
Office of the Accountant General (A& E),
Teynampet, Chennai 18.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records connected with the proceedings/orders passed by the 1st respondent in Lr.No.AG(A&E)/Legal cell/WP 26002/2007/IV/486 dated 4.7.2008 passed by the 1st respondent and quash the same in so far as it reduced the scale of the petitioner from Rs.5000-150-8000 to 4300-100-6000 and consequently reduced the DCRG and other final settlement amounts and quash the same and further direct the respondents to settle all petitioner's entire final settlement amounts in the scale of pay Rs.5000-150-8000 and consequentially allow pension.



WEB COPY

For Petitioner : Mr.Aravind Rajagopalan
for M/s.Arunachalam Associates

For Respondents : Mr.Vijay Shankar - R1 & R5
Mr.S.John J.Raja Singh
Government Advocate - R2 to R4

O R D E R

The petitioner joined service in the Public Works Department (PWD) on 22.06.1971 as Work Inspector Grade II and was provincialised on 22.06.1976.

2. The Tamil Nadu Public Works Department Employees' Association came to file O.A.No.2113 of 1992 before the Tamil Nadu Administrative Tribunal (Tribunal) seeking pay protection for various categories of employees who were in Grade posts under a Scheme called Flexible Complementing Scheme (Scheme). Pursuant to, and giving effect to the directions of the Tribunal dated 14.09.1992 in the aforesaid O.A., the Government of Tamil Nadu, Department of Finance had issued G.O.Ms.No.250 dated 21.03.1994 (G.O.) providing a revised scale of pay to certain cadres of employees upon completion of 10 years of service.

3. The G.O. took note of the observations of the Tribunal, that it would be more equitable if the pay of the post to which the concerned employees had been advanced prior to 01.06.1988, be taken into account and corresponding, revised scales allowed. Thus, employees who had completed 10 years in the cadres of Work Inspector Grade I, Grade II and Grade III as on 01.06.1988 were to be treated as holders of selection grade/special grade of the respective grades without the benefit of advancement to the next higher grade after 01.06.1988.

4. The orders of the tribunal were given effect to by the PWD in letter No.C4 (4)/12303/90 dated 18.12.1996 and the petitioner came under the beneficial sweep of the same from the date of G.O.Ms.No.250 as made applicable to the PWD on 18.12.1996 till date of superannuation on 31.10.2006.

5. While this is so, on the anvil of the petitioner's retirement and like a bolt from the blue, an order came to be passed on 09.10.2006 by the Accounts Officer, Office of the Accountant General, unilaterally revising/reducing the scale of pay of the petitioner from 5000-150-8000 to 4300-100-6000 and directing the recovery of certain amounts stated to have been over-paid to the petitioner.



6. Order dated 09.10.2006 came to be challenged by way of Writ Petition in W.P.No.26002 of 2007 and by order dated 29.08.2007 a learned single Judge of this Court set aside the same and allowed the Writ Petition on the sole ground of violation of principles of natural justice. The third respondent, i.e., the Accountant General, arrayed as R5 before me, was given liberty to initiate action afresh after affording opportunity to the petitioner.

7. A show cause notice was issued to the petitioner dated 27.03.2008 by the Senior Accounts Officer, Legal Cell, stating that the Accountant General, at the time of verification of the benefits that the retiring petitioner was entitled to, noticed an irregularity that was sought to be corrected by way of the show cause notice. The irregularity was that the petitioner had not, in fact, completed 10 years of service as per the date of cut-off stipulated under G.O.No.250, as the leave availed by the petitioner in excess of a period of three years had been omitted to be taken into account in computing the period of 10 years.

8. Thus the petitioner's service of 10 years would, in fact, be regularised only in 1989 as against 1986, as required by G.O.No.250. This is an admitted position and the respondents have clearly missed the bus insofar as they had omitted to take into account the leave availed by the petitioner, which was unsanctioned and on loss-of-pay basis, amounting to 3 years and 19 days. If the aforesaid period of leave were taken into account, then the petitioner would admittedly not have completed 10 years as on the cut-off date, which is 01.06.1988.

9. In the light of the admitted facts as aforesaid, the question that poses itself before me for resolution is as to whether the fact that the respondents have lost sight of the unsanctioned leave but have continued to grant the petitioner the benefit of G.O.No.250 from 1986 till his retirement in October, 2006, would permit them to take action and correct the mistake on the anvil of his retirement.

10. Notwithstanding that the violation is itself admitted, what concerns me is as to how the respondents, the State and the Public Works Department, two responsible public bodies, committed a mistake in arriving at the service benefits of the petitioner and permitted that mistake to be purported from 1996 till 2008. Having done so, I am of the view that their acts of negligence and gross carelessness cannot prejudice the petitioner who, admittedly has not contributed to that error, in any way. Admittedly, there was no request by the petitioner for claiming the benefit of G.O.No.250 and thus, the petitioner must not be penalised by reducing his scale of pay for a mistake in which he played no part.



11. What appears to have transpired is that once G.O.Ms.No.250 was made applicable to the PWD by letter dated 18.12.1996, the concerned authorities in the PWD have taken note of those employees who have completed 10 years as on the cut-off date. It is at that juncture, in the case of the petitioner, that the error has crept in, since the concerned authority has omitted to take note of the leave availed by the petitioner of 3 years and 19 days.

12. The records must have reflected the leave availed by the petitioner, since the letter in question is dated 18.12.1996, whereas the period of leave has been upto the year 1989. A gross error has thus been committed by the officials of the PWD for which normally, responsibility must be fixed and recovery initiated. However, I am conscious that the persons concerned would have retired long since and hence, and bearing in mind the ratio of the judgment of the Supreme Court in State of Punjab & Ors. V. Rafiq Masih (White Washer) ((2015 4 SCC 334) reluctantly, let the matter rest.

13. In fact, R1 and R5, have stated in counter at paragraph 6 that '.....it is the erroneous fixation of pay carried out by the departmental respondents, without any misrepresentation on the part of the petitioner, recovery of over-paid pay and allowances from 11.7.1999 to 31.10.2006 (Date of retirement) were not insisted.'

14. The Madurai Bench of the Madras High Court in the Case of M.Andy V. State of Tamil Nadu and others (W.P.No.587 of 2004 order dated 22.06.2006) had occasion to consider a similar challenge as before me now. The petitioner was employed as a Maistry Grade I in the Public Works Department in the year 1971. He was promoted to the post of Work Inspector Selection Grade I on 24.11.1980 and thereafter Work Inspector Special Grade I on 24.11.1990. There was a re-fixation of pay, based on which all monetary benefits as well as annual increments were given to him.

15. However, the second respondent therein had passed an order on 16.07.2004 to the effect that movement/promotion of the petitioner from the stage of Work Inspector Grade I to Selection Grade I and thereafter Special Grade I had been erroneous and had cancelled the said promotions. Consequently, excess salary paid to him was sought to be recovered.

16. The facts in the case of M.Andy (Supra) are very similar to the facts before me now. The Bench in that case relied on a judgment of the Supreme Court in the case of Sahib Ram V. State of Haryana (1995 AIR SCW 1780) concluding that since there had been no misrepresentation by that petitioner



about his service status and since the error of re-fixation lay fully at the door of the PWD, the petitioner should not be made to suffer.

17. In the case of Sahib Ram (supra) the matter concerned the appointment of the Appellant therein in the post of Librarian. The pay scales of Librarian had been upgraded upon condition that they possess minimum educational qualification of first or second class M.A., M.Sc., M.Com and in addition, first or second class B.Lib Science or a Diploma in Library Science.

18. Several Librarians who have been appointed prior to 31.12.1972 had submitted representations for upgradation of their pay and accepting the recommendations made in that regard by the University Grants Commission, the State relaxed the aforesaid requirements of securing first or second class in M.A., M.Sc., M.Com as well as other prescribed qualifications and passed an order accordingly.

19. Following the aforesaid order, revised pay scale was given to the appellant therein which was later directed to be withdrawn by the State. At paragraph 5 of the judgment, the Court notes the position that the appellant therein did not possess the required educational qualification and was not entitled to the pay upgradation granted. The error in upgrading the pay scale was clearly attributable to the principal and there had been no misrepresentation on the part of the appellant on the basis of which the benefit was given to him. Since the appellant had been paid salary on revised scale entirely based upon the erroneous interpretation of the Government order by the principal, the appellant should not be held to be at fault, and thus the recovery sought to be effected, was quashed.

20. In the present case, the Department in its counter, admits the bonafides of the petitioner, stating thus, that no recovery was proposed to be effected. The impugned order which computes the retirement benefits on the basis of the revised/reduced scale of pay is liable to be set aside and I do so. This Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

- 1 Senior Accounts Officer,
(Legal Cell) Office of the Accountant,
General (Accounts and Entitlements),
Tamilnadu, 361 Anna Salai, Chennai 18.
- 2 The Executive Engineer,
Cauvery Basin Sub Division, P.W.D./WRO, Tanjore.
- 3 The Chief Engineer (General),
Public Works Dept. Chepauk, Chennai 5.
- 4 The Secretary to Govt. of
Tamilnadu Public Works Dept.
Fort St.George, Chennai 9.
- 5 The Accountant General of Tamil Nadu
Office of the Accountant General (A&E)
Teynampet, Chennai 18.

+1cc to the Government Pleader, S.R.No.45237

W.P. No.19401 of 2008

VSN-II (CO)
SU(06/10/2021)