

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 47904 of 2006
and
W.P.M.P. No. 1 of 2006

1. K.Jayavelu (deceased)
2. J.Malliga
3. J.Dhanalakshmi
4. J.Raguraman
5. J.Rajendran
6. Rohini

.... Petitioners

(P2 to P6 substituted as legal heirs of deceased sole petitioner vide order dated 20.01.2021 made in W.M.P. No. 22963 of 2020 in W.P. No. 47904 of 2006 by RSKJ)

-vs-

1. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
RWS Division,
Vellore - 6.
2. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai - 600 005.
3. The Secretary,
State of Tamil Nadu,
Municipal Administration and Water Supply
Department, Fort St.George,
Chennai - 600 009.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent in Proc.No.1770/EA/RWS/2006 dated 29.10.2006 and quash the same and consequently direct the respondents to forbear from re-fixing the salary by withdrawing the benefit of FR 22(B) granted to the petitioner while appointing the petitioner in the post of Junior Assistant by way of recruitment by transfer from the post of Work Inspector in work charged establishment.

For Petitioners : Mr.G.P.Arivuchudar

For Respondents: : Ms.Tamilarasi
Standing counsel

O R D E R

The prayer sought for in the Writ Petition is for a Writ of Certiorarified Mandamus calling for the records of the first respondent in Proc.No.1770/EA/RWS/2006 dated 29.10.2006 and quash the same and consequently direct the respondents to forbear from re-fixing the salary by withdrawing the benefit of FR 22(B) granted to the petitioner while appointing the petitioner in the post of Junior Assistant by way of recruitment by transfer from the post of Work Inspector in work charged establishment.

2. The original petitioner was working as Assistant (Selection Grade) under the respondents / Board. His pay was fixed initially under F.R.22(B) on appointment from the post of Work Inspector as Junior Assistant with effect from 06.07.1979 and this benefit he had been enjoying up to 2006.

3. While so, since the original petitioner was to retire by 31.10.2006 on superannuation, just two days before his retirement, on 29.10.2006, the order of re-fixation of pay has been passed by the first respondent, by which, the pay scale of the petitioner has been drastically revised and accordingly the pay hitherto received by the petitioner from 06.07.1979 to 31.10.2006 was revised as not proper and therefore, they calculated a sum of Rs.72,573/- being the excess pay paid to the original petitioner and accordingly, they wanted to recover the same from the DCRG of the petitioner and that is the sum and substance of the order impugned dated 29.10.2006.

4. It is further to be noted that, as against the said order, though this Writ Petition has been filed immediately on receipt of the said order dated 29.10.2006, the original petitioner has given a detailed representation on 31.10.2006 to the second respondent to review the order passed on 29.10.2006 and he has explained in the said representation as to how he is entitled to get original pay fixed and received by the petitioner all along. Even though the said representation was made immediately on receipt of the impugned order, the same has also not been decided so far, probably because of the pendency of this Writ Petition before this Court.

5. In the meanwhile, in view of the death of the original petitioner, K.Jayavelu, his legal heirs had been impleaded subsequently by the orders of this Court, that is how the legal heirs who are the present petitioners are maintaining this writ petition with the aforesaid prayer.

6. I have heard Mr.G.P.Arivuchudar, learned counsel appearing for the petitioners who would submit that, the petitioner's fixation of pay was made only based on the relevant rule, i.e., F.R.22(B), when the petitioner was appointed as Junior Assistant from the post of Work Inspector and therefore, there cannot be any wrong fixation in making the pay fixation in respect of the petitioner at the time of appointment as the Junior Assistant, which the petitioner was enjoying from 06.07.1979 till 31.10.2006, i.e., the date on which, he attained superannuation and retired from service.

7. The learned counsel would also submit that, in the impugned order, consequent to the re-fixation of pay, Rs.72,573/- was sought to be recovered. In this regard, the learned counsel appearing for the petitioner would submit that, as per the law declared by the Hon'ble Supreme Court in State of Punjab v. Rafiq Masih (White Washer) reported in (2014) 8 SCC 833, at para 12, the respondents cannot recover any amount from the retired employee i.e., the petitioner and that too based on the alleged excess salary paid to the petitioner from 06.07.1979 till his retirement i.e., up to 31.10.2006. Therefore, the impugned order is bad in law.

8. However, Ms.Tamilarasi, learned Standing counsel appearing for the first and second respondents / TWAD Board submitted that, though initially the petitioner's pay was fixed under F.R.22(B) on appointment from the post of Work Inspector as Junior Assistant, subsequently it was considered, as to whether the said pay fixed in favour of the petitioner was proper fixation of pay. Subsequently, it seems that, they found that, in Junior Assistant Post if he has completed ten years regular service, then only he would be eligible for Selection Grade with effect from 06.07.1979. Therefore, the pay should have been paid to the petitioner as Junior Assistant (Selection Grade) and at that time, it was only Rs.1200-300-1560-40-2040 as per the proceeding issued by the Superintending Engineer. Since the petitioner exercised option to re-fix the pay under F.R.22(B), without taking in to account notional increment for Selection Grade Post of Junior Assistant i.e., ordinary scale and pay, the pay has not been re-fixed for Selection Grade Post of Junior Assistant with effect from 06.07.1979. However, the pay has been re-fixed under F.R.22(B) taking in to account the pay drawn in the ordinary scale of pay of Rs.975-25-1130-30-1660.

9. Accordingly, what was the excess pay paid to the petitioner from 06.07.1979 to 31.10.2006 was calculated and therefore, the excess pay was sought to be recovered and accordingly re-fixed the pay, based on which, the pensionary benefits as well as the family pension benefits payable to the legal heirs of the petitioner were sanctioned and being paid. Therefore, the learned Standing counsel appearing for the respondents / Board would submit that, the order impugned herein is sustainable and it requires no interference from this Court.

10. I have considered the rival submissions made by the learned counsel appearing for both parties and perused the materials placed before this Court.

11. It is an admitted fact that, the re-fixation of pay scale, that too at end of the retirement of the petitioner was made, after having received the original pay fixed, for nearly about 26 years, before which the petitioner has not been given any notice and suddenly, it has been inflicted on the petitioner just two days before his superannuation.

12. Therefore, the petitioner had chosen to give a detailed representation to the second respondent on 31.10.2006. Had this been made known to the respondents they also would have been in a position to decide the same before passing the impugned order. However, the opportunity since was not given, this Court feels that, to meet the ends of justice, the representation of the petitioner dated 31.10.2006 shall be considered objectively by the respondents, where the issue raised therein shall be taken into account and accordingly, if need arises, a personal hearing / opportunity can also be given to the legal heirs of the deceased employee, who have been now impleaded as petitioners in this Writ Petition and accordingly, necessary orders may be passed within a time frame.

13. However, this arrangement as indicated above is made as that would suffice to meet the ends of justice and therefore taking into account of the aforesaid, this Court is inclined to dispose of this Writ Petition with following orders:

"(i) That the second respondent herein shall consider the representation given by the original petitioner dated 31.10.2006 against the impugned order dated 29.10.2006.

(ii) While considering the same, if need arises, opportunity of being heard, shall be given to the legal heirs of the petitioner, who have been impleaded now as petitioners herein.

(iii) While considering the said representation, the second respondent shall look into the grounds raised therein and accordingly, take a decision on merits. If ultimately, the second respondent decides to review the impugned order dated 29.10.2006 as per such review, the benefits if any further to be sanctioned to the deceased employee can very well be sanctioned to and in favour of the legal heirs of the deceased employee and accordingly, revised pension as well as family pension can be decided.

(iv) The aforesaid exercise shall be undertaken by the second respondent within a period of eight weeks from the date of receipt of a copy of the order."

14. With these directions, the Writ Petition is disposed of. However, there shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

vji

To

1. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
RWS Division,
Vellore - 6.
2. The Managing Director,
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No.31, Kamarajar Salai,
Chepauk, Chennai - 600 005.
3. The Secretary,
State of Tamil Nadu,
Municipal Administration and Water Supply
Department, Fort St.George,
Chennai - 600 009.

+1cc to Mr.G.P.Arivuchudar, Advocate SR.No.3213

W.P. No. 47904 of 2006
and
W.P.M.P. No. 1 of 2006

KV(CO)
GMY(07/07/2021)

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