



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.626 of 2022

G.Villumani

... Appellant

..Vs..

1. The Commissioner of Labour,
Teynampet,
Chennai- 600 006.
2. Inspector of Labour,
Erode District.
3. The Assistant Inspector of Labour,
Erode 4th Circle
Erode District.

... Respondents

Prayer:Writ Appeal is filed under clause 15 of the Letter Patent praying to set aside the order dated 10.01.2022 passed in W.P.No.10009 of 2014 by allowing this Writ Appeal.

Prayer in W.P.No.10009 of 2014

Writ Petition filed under Section 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the entire records which culminated in issuing the proceedings in Se. Mu. No.A 3457/2008 dt 21.3.2009 on the file of the 2nd respondent and the consequential proceedings in Na. Ka. No.175/2008 dt 31.3.2010 on the file of the 3rd respondent quash both the orders and consequently direct the respondents to refund to the petitioner the sum of Rs. 35 838/- deducted from him with reasonable rate of interest within a time to be stipulated by this Court.

For Appellant : Mr.B.K.Girish Neelakantan

For Respondents: Mr.Stalin Abhimanyu
Additional Government Pleader



J U D G M E N T

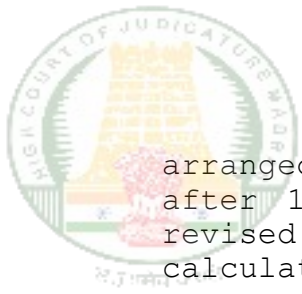
S.VAIDYANATHAN, J.
&
MOHAMMED SHAFFIQ, J.

The present Appeal has been preferred against the order of the learned Single Judge made in W.P No.10009 of 2014 dated 10.01.2022, in dismissing the Writ Petition.

2.The facts in nutshell placed before this Court are as follows:

(i) According to the Appellant/Writ Petitioner, he was appointed as Junior Assistant with effect from 16.06.1982, under 10 (a) (1) of the General Rule on temporary basis in Labour Department, Salem District and after getting concurrence of the Public Service Commission, his services have been regularised with effect from 25.06.1984 vide G.O.Ms.No.996, Personnel and Administrative (Placements) Department, dated 22.09.1984. Thereafter, he was allotted to the office of the Inspector of Factories, Erode to work as upgraded Assistant. Subsequently, by proceedings dated 31.07.1995, the Appellant/Writ Petitioner was transferred from Erode to office of the Labour Commissioner, Chennai as a regular Assistant. The Writ Petitioner has also passed the required Departmental Exams for promotion. However, some of the promoted employees have approached the Tamil Nadu Administrative Tribunal claiming that the persons who have not passed the mandatory departmental test have been promoted to the post of Assistant and they are ineligible to hold such posts. After contest, the Tribunal held that the panel drawn for the post of Superintendents/Assistant Inspector of Labour for the years 1998-1999 and 1999-2000 were valid and should not be disturbed, since all of them had passed the tests before promotion. In the case of others, the seniority shall be reckoned by taking into account the date of their appointment as Assistant.

(ii) As against the same, the aggrieved persons filed W.P.No.18861 of 2001 before the Division Bench of this Court and the Division Bench of this Court modified the order of the Tribunal to the effect that the seniority in the category of Assistants would have to be fixed by taking into account the date of appointment of Assistants in respect of those who are fully qualified as per Special Rules, and the Part A and B date of passing of the tests in respect of those who have acquired the test qualifications after their promotion as Assistants. On the basis of the order dated 28.02.2005, the 1st Respondent had issued a memorandum dated 24.03.2005, publishing a draft re-



arranged seniority list for Assistants who have been promoted after 17.11.1984 and hence the Appellant's seniority has been revised from Serial No.1320 to 1745, thereby, the excess amount calculated at Rs.35,838/- which was paid to the Writ Petitioner, was sought to be recovered by the Respondents. Therefore, by proceedings dated 31.03.2010, the 2nd Respondent directed to deduct a sum of Rs.35,838/- from the Appellant's DCRG benefit in three instalments. Challenging the same, the Appellant has filed the Writ Petition in W.P.No.10009 of 2014.

3. The learned Single Judge vide order dated 10.01.2022 dismissed the above Writ Petition. Being aggrieved over the same, the Appellant/Writ Petitioner has preferred this Writ Appeal.

4. The learned counsel appearing for the Appellant/Writ Petitioner submitted that the respondents may be directed to refund the excess amount recovered from the Writ Petitioner by considering the order of this Court dated 15.03.2019 made in W.P.No.6000 of 2013.

5. The learned Additional Government Pleader appearing for the Respondents contended that the seniority of the Writ Petitioner was fixed as 1744 instead of 1292 in the cadre of Assistant, taking note of the date of passing of Departmental examination, thereafter, proceedings were issued by the 2nd Respondent on 21.03.2009 regulating the pay of the Writ Petitioner as Junior Assistant from 04.04.1994 to 30.05.2003 and in the post of Assistant from 31.05.2003 to 31.10.2008, based on the revision of seniority, as the Writ Petitioner was pushed out in the seniority list from 1292 to 1744, and, therefore, a sum of Rs.35,838/- drawn by the Writ Petitioner from 04.04.1994 to 31.01.2008 was sought to be recovered from the Death cum Retirement Gratuity as per Rule 4 of the Statutory Service Rules of Fundamental Rules, and that apart the Writ Petitioner has also given a consent letter on 08.03.2009, to recover the excess amount from the DCRG benefits.

6. Heard both sides. Perused the records.

7. Though it is vehemently contended by the learned counsel for the Writ Petitioner that the benefit of the order dated 15.03.2019 made in W.P.No.6000 of 2013 has been extended to one A.Subbulakshmi the Petitioner therein, in not recovering the amount, the learned Single Judge has rightly proceeded to hold that there was no discussion with regard to recovery proceedings in the said order, relied upon by the Writ Petitioner. That apart the learned Single Judge also held that the Writ Petitioner has given consent letter on 18.03.2009 for recovery of the amount and apart from the above, he approached the Court



after five years of passing of impugned order and with these observations, dismissed the Writ Petition.

8. This Court is in agreement with the reasoning assigned by the learned single Judge and finds no reason to differ from the same. In view of the same, we find no reasons to interfere with the order of the learned Single Judge.

9. In the result, this Writ Appeal is dismissed. We direct the Respondent to release the DCRG amount to the petitioner, if not already released, after adjusting the sum of Rs.35,838/-, which is said to be the alleged excess amount paid to the petitioner, within a period of 60 days from the date of receipt of a copy of this order, failing which the balance amount will have to be paid with interest @ 9% per annum from today. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Labour,
Teynampet,
Chennai- 600 006.
2. Inspector of Labour,
Erode District.
3. The Assistant Inspector of Labour,
Erode 4th Circle
Erode District.

+1cc to Mr.B.K.Girish Neelakantan, Advocate, S.R.No.19245
+1cc to the Special Government Pleader, S.R.No.19484

W.A.No.626 of 2022

SKM(CO)
CT 25/04/2022