



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 28982 of 2012
and M.P.No. 1 of 2012

V.Ramakrishnan

.. Petitioner

Vs.

1.Pondicherry Market Committee
represented by its
Chairman-cum-Director of Agriculture
Thatanchavadi
Pondicherry

2.The Secretary,
Pondicherry Market Committee
Thatanchavadi
Pondicherry.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the 1st respondent letter No.83/PMC/B/2012-13 dated 27.08.2012 and to quash the same.

For Petitioner : Ms/.V.Ajaya Kumar

For Respondents : Mr.C.T. Ramesh, AGP (Pondy)
-R1&R2

O R D E R

The writ petitioner was initially joined the service of the respondents in the year 1996 as daily wages employee and subsequently, based on the representation submitted by the petitioner, the petitioner was promoted to the post of Senior Supervisor on ad-hoc basis w.e.f 14.10.2003. The 2nd respondent by order dated 21.09.2010 promoted the petitioner to the post of Senior Supervisor w.e.f 17.11.2004 on regular basis and directed to discharge duties as Superintendent Grade II (Senior Supervisor). On the basis of the said promotion order, the petitioner's pay was also fixed w.e.f. 17.11.2004. While that being so, the 1st respondent passed the impugned order directing



the 2nd respondent to recover the salary paid to the petitioner w.e.f 17.11.2004 stating reason that there was no approval of the Chairman/1st respondent for the promotion granted to the petitioner.

WEB COPY

2. According to the learned counsel for the petitioner, the impugned order passed by the 1st respondent is violation of principles of natural justice and the respondent ought to have issued show cause notice before passing impugned order. Therefore, the impugned order is liable to be set aside.

3. On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that due to technical error committed by the respondents, the petitioner was granted promotion as Senior Supervisor w.e.f 17.11.2004 therefore, the respondents have passed the impugned order to recover the excess amount that has been paid as salary by the respondent in view of the erroneous promotion. Since the said promotion was erroneous, the petitioner is not legally entitled to retain the excess salary paid between the period from 17.11.2004 to 30.09.2010. Therefore, the impugned order passed by the 1st respondent is perfectly valid and does not require any interference as contended by the learned counsel for the petitioner.

4. Heard both sides and perused the documents available on record.

5. The main arguments put forth by the learned counsel for the petitioner is that the respondents without issuing notice to the petitioner, had passed the impugned recovery order. Further, the reason stated in the impugned order that the petitioner was promoted without approval of Chairman is baseless and without verification of records.

6. On perusal of the counter affidavit, the respondents have not given any reply for the specific ground raised by the petitioner that he was not given opportunity before passing the impugned order. Further in the impugned order also there is no discussion for the said ground raised by the petitioner. Therefore, on this short ground, the impugned order passed by the 1st respondent is liable to be quashed.

7. Considering the facts and circumstances of the case and in the light of the principles laid down by the Hon'ble Supreme Court and this Court in various decisions, this Court is of the view that though the 1st respondent is vested with the powers, he ought to have issued a notice to the petitioner before passing the impugned recovery order. Therefore, the impugned order passed by the 1st respondent without giving an opportunity to the



petitioner is erroneous and liable to be set aside.

8. Accordingly, the impugned order dated 27.08.2012 passed by the 1st respondent is quashed and remitted to the first respondent to consider afresh and pass orders after affording due opportunity to the petitioner in accordance with law, within a period of twelve (12) weeks from the date of receipt of a copy of this Order.

9. In the result, the writ petition is allowed to the extent above. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ak

To

- 1 The Chairman-cum-Director of Agriculture
Pondicherry Market Committee Thatanchavadi
Pondicherry
2. The Secretary,
Pondicherry Market Committee
Thatanchavadi
Pondicherry.

+1cc to Ms/.V.Ajaya Kumar, Advocate, S.R.No.2811

+1cc to the Government Pleader, Pondicherry S.R.No.2481

W.P.No.28982 of 2012
and M.P.No. 1 of 2012

PL(CO)
CT 28/01/2022