IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.551 of 2015

K.P.Rajendran ... Petitioner

Vs.

1.The Principal Accountant General
(Accounts & Entitlements)
Tamil Nadu, Chennai – 600018.

2.The Automobile Engineer
Tamil Nadu State Health Transport Department,
Regional Workshop (Health)
Guindy, Chennai – 600032. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in PO8/10809356/1-Ro809356 dated 10.07.2014 and the order of the second respondent in proceedings No.697/A/Ma.Ps.Ma.(Su)Se/14 dated 20.08.2014 and quash the same and direct the respondents to restore the pay fixation which existed prior to the issue of the impugned orders and to refund the amount recovered from the petitioner's gratuity, that is, Rs.76715/- with interest as per Rules.

For Petitioner : Mr.P.Manoj Kumar

For R1 : Mrs.Hema Muralikrishnan
For R2 : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

O R D E R

The order of fixation of pay and revision of pension and consequential recovery orders are under challenge in the present writ petition.

2. The petitioner was appointed as Helper in the Tamil Nadu State Health Transport Department on 06.03.1980. He was promoted as Fitter-II on 18.06.1982 and finally promoted as Foreman and retired from service on attaining the age of superannuation on 31.05.2014.

3. The grievance of the petitioner is that he was awarded with the Selection Grade-I on completion of 10 years of service. Accordingly, his pay was revised during the relevant point of time for receiving the salary as applicable in accordance with the pay Rules in force. However, on retirement, the revision of pay was effected by the Principal Accountant General of Tamil Nadu in the impugned proceedings dated 10.07.2014 and consequential order was passed by the 2nd respondent in proceedings dated 20.08.2014, wherein, the recovery also has been imposed.

4. The learned counsel for the petitioner made a submission that the recovery has been imposed without issuing any show cause notice to the

writ petitioner and therefore, the order impugned dated 20.08.2014 is in violation of the principles of natural justice.

5. The learned counsel appearing on behalf of the 1st respondent / the Principal Accountant General of Tamil Nadu made a submission that the revision of pay and pension was calculated in accordance with the pay Rules and the service particulars of the petitioner was considered by the 1st respondent for revision of pension in accordance with the procedures contemplated. Thus, the order passed by the 1st respondent is in accordance with the pay Rules and as per the Government order in force.

6. As far as the consequential order passed by the 2nd respondent in proceeding dated 20.08.2018 is concerned, the learned Additional Government Pleader is unable to establish that a show cause notice was issued to the writ petitioner by affording an opportunity and therefore, the said order is in violation of the principles of natural justice.

7. Undoubtedly, erroneous fixation of pay or pension can be corrected by the Competent Authority at any point of time. In the event of any misrepresentation or an undertaking in written by the employee concerned then the authorities are empowered to recover the excess salary

or pension, if any granted. In the event of no misrepresentation or in the absence of written undertakings, the authorities cannot recover the excess salary, if any paid consequent to the erroneous fixation of pay. In the present case, the respondents are unable to establish that there was a misrepresentation on the part of the writ petitioner. No show cause notice was issued and that apart, the impugned orders were passed after the retirement of the writ petitioner on 31.05.2014.

8. Considering the facts and circumstances, this Court is of an opinion that wrong fixation can be corrected as per the proceedings of the Principal Accountant General of Tamil Nadu. However, the consequential order dated 20.08.2014, in respect of recovery cannot be sustained. In the event of imposing recovery after retirement, the same would cause hardship to the petitioner and thus, the impugned order passed in proceeding dated 20.08.2014 stands quashed in respect of the recovery alone and the fixation as applicable, must be continued and the pension as per the rules are to be paid to the writ petitioner. The excess amount of recovery already recovered from the petitioner is directed to be repaid to him within a period of 12 weeks from the date of the receipt of a copy of this order.

9. With this direction, the Writ Petition stands allowed. No costs.

12.07.2022

Jeni

Index : Yes
Speaking order : Yes

To

1.The Principal Accountant General
(Accounts & Entitlements)
Tamil Nadu, Chennai – 600018.

2.The Automobile Engineer
Tamil Nadu State Health Transport Department,
Regional Workshop (Health)
Guindy, Chennai – 600032.

S.M. SUBRAMANIAM, J.

Jeni

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