



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.10009 of 2014

G.Villumani

... Petitioner

Vs.

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

... Respondents

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.3457/2008, dated 21.03.2009 on the file of the second respondent and the consequential proceedings in Na.Ka.No.175/2008, dated 31.03.2010, on the file of the third 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 petitioner : Mr.B.K.Girish Neelakandan

For Respondents : Mr.P.Anandakumar,
Government Advocate

O R D E R

The Writ Petition has been filed to quash the proceedings in Se.Mu.No.3457/2008, dated 21.03.2009 and Na.Ka.No.175/2008, dated 31.03.2010, passed by the 2nd and 3rd respondents respectively and for a direction to the respondents to refund the sum of Rs.35,838/- deducted from him with reasonable rate of interest to the petitioner.



2. It is the case of the petitioner that originally the petitioner was appointed as Junior Assistant on 16.06.1982 under 10 (a) (1) of the General Rule on temporary basis in Labour Department, Sale District. After getting concurrence of the Public Service Commission, the petitioner was regularised with effect from 25.06.1984 vide G.O.Ms.No.996, Personnel and Administrative (Placements) Department, dated 22.09.1984. Thereafter, the petitioner was allotted to the office of the Inspector of Factories, Erode to work as an upgraded Assistant. Subsequently by proceedings dated 31.07.1995, the petitioner was transferred from Erode to Office of the Labour Commissioner, Chennai as a regular Assistant. The petitioner has also passed the required departmental exams for promotion. In this circumstance, 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.

3. As against the same, the aggrieved persons filed W.P.No.18861 of 2001 before the Division Bench of this Court. After elaborate discussions, on 28.02.2005, the Division Bench had disposed of the Writ petition, modifying 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.

4. 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 petitioner's seniority has been revised from Serial No.1320 to 1745, thereby, the excess amount calculated at Rs.35,838/- which paid to the petitioner, was sought to be recovered by the respondents. Subsequently, the petitioner was retired from service on 31.10.2008. Therefore, by proceedings dated 31.03.2010, the 2nd respondent directed to deduct the sum of Rs.35,838/- from the petitioner's DCRG benefit in three instalments, which according to the petitioner, there is a discrimination on the part of the respondent in deducting the amount since the Division Bench



order has not been given effect to all other concerned. In this regard, the petitioner has also made a representation dated 25.09.2013 to the 1st respondent for refund of the said amount. However, the same has been rejected on the ground that the amount was already been deducted. Hence, the petitioner has filed the present Writ Petition.

5. The learned counsel for the petitioner submitted that the impugned order of the respondent department is legally not sustainable. According to the petitioner, when recovery made from the petitioner, the same manner should be followed to the all other identically placed employees but there is no such recovery has been made to other employees. Hence, the petitioner alone has been discriminated.

6. The learned counsel for the petitioner also relied on the Judgement of this Court made in W.P.No.6000 of 2013, dated 15.03.2019 in support of his case in which the recovery proceeding has been set aside in favour of the petitioner therein.

7. The learned Government Advocate filed counter affidavit stating that in pursuance to the orders of this Court made in W.P.No.18861 of 2001, a revised seniority list of Assistant was prepared for the employees who were promoted after 17.11.1984. In the above seniority list, the seniority of the petitioner has been fixed as 1744 instead of 1292 in the cadre of Assistant in regard to the date of passing of Departmental exam. Thereafter, the 2nd respondent issued a proceedings dated 21.03.2009, regulating the pay of the petitioner in the post of Junior Assistant from 04.04.1994 to 30.05.2003 and in the post of Assistant from 31.05.2003 to 31.10.2008. Hence, the excess pay of Rs.35,838/- drawn by the petitioner from 04.04.1994 to 31.10.2008 was ordered to be recovered from the Death cum Retirement Gratuity as per Rule 4 of the Statutory Service Rules of Fundamental Rules.

8. The learned counsel for the respondents further submitted that the petitioner has given consent for recovery / pay allowance when he attained the age of superannuation. Therefore, on the basis of the proceeding of the 2nd respondent and upon the acceptance letter dated 18.03.2009 of the petitioner, the excess amount has been recovered from the petitioner's DCRG benefit. Hence, the procedure adopted by the respondent is fair and there is no reason to interfere with the order passed by the respondent / department. It is also contended that the petitioner has approached this Court after lapse of five years from the date of passing of impugned order and there is no valid reason given for the said delay.



9. In response, the learned counsel for the petitioner submitted that the consent letter given by the petitioner on 18.03.2009 is a regular formality followed by all employees at the time of settling terminal benefits. Therefore the said contention cannot be sustainable. Insofar as the delay in filing the Writ Petition is concerned, the learned counsel for the petitioner submitted that the petitioner has made attempts to approach the authorities concerned to refund the amount remitted and in this regard the petitioner had made representations before the authorities concerned. Hence, there is no delay in filing the Writ Petition.

10. I have heard the learned counsel appearing on either side and perused the materials available on record.

11. On a perusal of the papers, it shows that there is no proof enclosed in the typed set of papers with regard to the delay. Further this Court finds that there is no discussion about the recovery proceedings in the Judgment made W.P.No.6000 of 2013 which relied on by the petitioner. In the case on hand, the petitioner has given consent on 18.03.2009 for recovery proceedings and the Writ Petition has also been filed after lapse of five years from the date of passing of impugned order. There is no violation in the recovering proceedings made by the respondent department. Therefore, this Court finds no reason to interfere with the order of the respondent department and there is no merits in this Writ petition. Accordingly, the Writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vum

To

1. The Commissioner of Labour,
Teynampet, Chennai - 600 006.
2. The Inspector of Labour,
Erode District.



3. The Assistant Inspector of Labour,
Erode 4th Circle,
Erode District.

+1cc to Mr.B.K.Girish Neelakandan, Advocate, S.R.No.2186

+1cc to the Government Pleader, S.R.No.2748

W.P.No.10009 of 2014

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NSK 07/02/2022