



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.831 of 2014
and
M.P.Nos.1 and 2 of 2014

M.Kalivaradhan

...Petitioner

Vs.

1. The Secretary to Government,
Agriculture Department,
Chennai - 9.
2. The Director of Agriculture,
Chepauk, Chennai - 5.
3. The Joint Director of Agriculture,
Villupuram, Villupuram District.
4. The Assistant Director of Agriculture,
Thirukovilur, Villupuram District.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records connected with the Impugned Orders passed by the 3rd respondent in his Pro.A4/8922/ 2005 dated 27.11.2013 and Pro.A4/10543/2013 dated 28.11.2013 and Pro.A4/10543/2013 dated 28.11.2013 and quash the same and consequently direct the respondents to return Rs.1,01.255/- and direct the respondents to encash the following leave and pay to the petitioner (a) Earned Leave from 19.12.95 to 23.5.96 - 212 days (b) Unearned leave of private affairs - 180 days with interest at the rate of 12% per annum.

For Petitioner : Mr.A.Baskaran
For Respondents : Mr.A.M.Iyyadurai
Government Advocate

ORDER

The order of revision of pay and the consequential recovery issued by the 3rd respondent is under challenge in the present writ petition.



2. The writ petitioner was appointed as Field Demonstration Officer on 29.03.1966 and promoted to the Post of Assistant Agriculture Officer on 16.11.1981 and retired from service on 30.06.2002. The order impugned reveals that the petitioner availed Medical Leave and the leave period was subsequently regulated. However, there was an erroneous fixation of pay during the relevant point of time and accordingly, an Audit objection was raised and based on the objection, the impugned order of recovery has been issued.

3. The respondents have stated that the pay was erroneously fixed and revision was effected in violation of the pay rules in force. The respondents issued orders of recovery and the excess pay was granted to the petitioner.

4. The fact remains that the petitioner retired from service on 30.06.2002 as Assistant Agriculture officer, which his a Group 'C' post. The leave was regulated, when the petitioner was in service. The leave availed pertained to the year 1995-96. Thus, there was a long delay even in identifying the error in the fixation of pay. The impugned order was issued in the year 2013, after a prolonged period of 11 years from the date of retirement of the writ petitioner. Such an order of recovery issued against the petitioner, more specifically, after a lapse of 11 years from the date of retirement, if implemented, would cause hardship to the pensioner. Even in case of error in fixation of pay, the authorities competent are empowered to correct the fixation and pay the correct pay applicable to the pensioner / family pensioner is concerned. However, excess pay, if at all received by the pensioner, cannot be recovered after a lapse of long years. Such recovery is permissible only if there is any misrepresentation on the part of the employee or he has given an undertaking for such recovery. In the absence of any one of these reasons, the authorities cannot impose recovery after a prolonged period. However, they are empowered to correct the scale of pay as applicable to the pensioner concerned. The respondents could not able to establish that there was a misrepresentation on the part of the writ petitioner. The petitioner was fixed with the pay as per the orders of the respondents. Subsequently, during the audit objection, the error was identified.

5. Under these circumstances, the respondents are permitted to correct the errors and fix the correct scale of pay or revision of pension as the case may be as applicable to the writ petitioner. However, the excess payment already made cannot be recovered. That apart, the impugned order has been passed without even issuing show cause notice to the writ petitioner. Thus, the order is in violation of the principles of natural justice.



6. For all these reasons, the impugned order passed by the third respondent in his proceedings in Pro.A4/8922/ 2005 dated 27.11.2013, Pro.A4/10543/2013 dated 28.11.2013 and Pro.A4/10543/2013 dated 28.11.2013 are quashed with reference to the recovery of excess payment is concerned. As far as the fixation of pay is concerned, the respondents are directed to verify the same with reference to the service records of the petitioner and fix the correct scale of pay and accordingly, grant pension as applicable.

7. With these observations, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Agriculture Department,
Chennai - 9.
2. The Director of Agriculture,
Chepauk, Chennai - 5.
3. The Joint Director of Agriculture,
Villupuram, Villupuram District.
4. The Assistant Director of Agriculture,
Thirukovilur, Villupuram District.

+1cc to Mr.A.Baskaran, Advocate, S.R.No.33854
+1cc to the Government Pleader, S.R.No.34510

W.P.No.831 of 2014

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NSK/21/06/2022