

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.10357 OF 2014
AND
M.P.NOS.1 & 2 OF 2014
AND
W.M.P.NO.14878 OF 2017

T.Soundararajan ...Petitioner / Petitioner

Vs.

1.The Secretary to Government,
Public Department,
Secretariat, Fort.St. George,
Chennai - 600 009.

2.The Secretary to Government,
Municipal Administration
and Water Supply Department,
Secretariat, Fort.St. George,
Chennai - 600 009.

3.The Secretary to Government,
Personnel and Administration Reforms Department,
Secretariat, Fort.St. George,
Chennai - 600 009.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order issued by the 1st respondent in G.O.(Ms).No.184 Public Department dated 04.03.2014 and quash the same and to direct the 2nd respondent not to make any recovery from the salary of the petitioner.

For Petitioner : Mr.S.N.Ravichandran
For Mr.T.Ranganathan

For Respondents : Ms.S.Anitha
[R1 to R3] Special Government Pleader

ORDER

The order of re-fixation and the consequential recovery issued by the first respondent in G.O.(Ms).No.184, Public Department dated 04.03.2014 is sought to be quashed in the present writ petition.

2. The writ petitioner is now working as Municipal Commissioner and previously, he was working as Assistant Section Officer in the Secretariat.

3. Pursuant to the application submitted by the writ petitioner to step up his pay on par with his junior Tmt.K.Udayam, Assistant Section Officer, Personnel and Administrative Reforms Department, the first respondent issued orders in G.O.Ms.No.357, Public Department dated 16.03.2007. Pertinently, the stepping up of pay was granted in favour of the writ petitioner only based on his representation and the comparative charge filed along with his juniors pay Tmt.Udayam. In the said Government Order issued in G.O.Ms.No.357 dated 16.03.2007, the first respondent has clearly stated in paragraph 7 that "Consequent on the re-fixation ordered in paragraph 3 above, if any excess payment is made and found out at a later date, such excess payment shall be recovered from them as per rules."

4. Therefore, the stepping up of pay was granted at the instance of the writ petitioner and in his application, the petitioner has compared the salary of his junior Tmt.Udayam. With caution, the first respondent has clearly mentioned that in the event of any excess payment, the same will be recovered as per the rules.

5. The first respondent subsequently found that the case of the writ petitioner was erroneously considered and the stepping up of pay done in favour of the petitioner was in violation of the Government orders and the rules in force. Thus, the impugned order of re-fixation and recovery was made.

6. The learned counsel for the petitioner reiterated that the re-fixation and recovery was made without even issuing any show cause notice or opportunity to the writ petitioner. Thus, the order impugned is in violation of the principles of natural justice.

7. Any order, affecting the right of an employee is to be passed only after providing an opportunity. No doubt, while stepping up of pay of the petitioner, the first respondent has stated that in the event of any excess payment, the same will be recovered as per the rules. The Rule requires an opportunity to

be provided before imposing recovery as the petitioner is entitled to submit his objections on the calculation or revision of pay or otherwise. However, such an opportunity was not granted to the writ petitioner and thus, this Court is inclined to remand the matter back to the first respondent for reconsideration.

8. Accordingly, the impugned order passed by the first respondent in G.O.(Ms).No.184, Public (Establishment-IV) Department dated 04.03.2014 is quashed and the first respondent is directed to issue a show cause notice to the writ petitioner, setting out the facts and details within a period of four weeks from the date of receipt of a copy of this order.

9. The petitioner is at liberty to submit his explanations/objections, if any, within a period of two weeks from the date of receipt of show cause notice to be issued by the first respondent. On receipt of any such explanations/objections by the writ petitioner, the first respondent is directed to consider the case on merits and in accordance with law within a period of twelve weeks thereafter.

10. With these directions, the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

1.The Secretary to Government,
Public Department, Secretariat,
Fort.St. George, Chennai - 600 009.

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Municipal Administration
and Water Supply Department,
Secretariat, Fort.St. George,
Chennai - 600 009.

3.The Secretary to Government,
Personnel and Administration Reforms Department,
Secretariat, Fort.St. George, Chennai - 600 009.

W.P.No.10357 of 2014

SSN(CO)
RVM(18/07/2022)