



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-06-2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.7429 of 2014

V.Prakash Naidu

...Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Handlooms, Weaving, Textiles and
Handicrafts (G1) Department,
Secretariat, Chennai - 600 009.

2.The Director of Sericulture,
Salem - 636 001.

3.The Assistant Director of Sericulture,
Denkanikottai,
Krishnagiri District - 635 107.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the first respondent in G.O.Ms.No.135, Handlooms Handicrafts Textiles and Khadi (G1) Department dated 18.06.2013 and quash the same and consequently direct the respondents to refund the sum of Rs.2,33,335/- (Two lakhs thirty three thousand thirty five only) recovered from his retirement benefits in the name of excess payment made towards his salary.

For Petitioner : Mr.R.Rengaramanujam

For Respondents : Mr.M.Bindran,
Additional Government Pleader.

O R D E R

The order of recovery issued by the third respondent-Assistant Director of Sericulture in proceedings dated 16.02.2012 and the appellate order passed by the first respondent-State in G.O.Ms.No.135 dated 18.06.2013, are under challenge in the present writ petition.



2. The petitioner was appointed as Office Assistant on 01.06.1973 and promoted to the post of Sericulture Operator on 01.10.1977. The petitioner subsequently promoted to the post of Junior Inspector of Sericulture on 16.05.1990. The petitioner reached the age of superannuation on 29.02.2012 and he was allowed to retire from service.

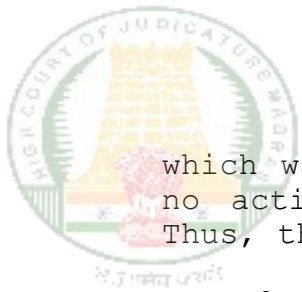
3. The learned counsel for the petitioner made a submission that the petitioner passed the departmental test, namely, language test during the year 1993. However, the respondents have initiated action on the ground that the petitioner had not passed the language test during the relevant point of time i.e., in the year 1977 and accordingly, initiated action to recover the salary paid to the petitioner from 01.10.1977 to 31.03.2009, a sum of Rs.2,33,355/- was recovered from the terminal benefits of the petitioner in a lumpsum.

4. The reasons stated in the order impugned is that the petitioner during the relevant point of time was not qualified and for the said period, the revised salary was fixed and disbursed in favour of the petitioner. The revision scale of pay and disbursement of salary in respect of the period from 1977 to 2009 was sought to be irregular and consequently, the impugned order of recovery has been issued. The appeal filed by the petitioner against the order of recovery was also rejected by the first respondent in G.O.Ms.No.135 dated 18.06.2013. Thus, the petitioner is constrained to move the present writ petition.

5. The learned Additional Government Pleader appearing on behalf of the respondents objected the contentions raised on behalf of the petitioner by stating that the petitioner had not passed the requisite departmental test, namely, the language test during the relevant point of time and by mistake, the revision of scale of pay was effected, which was found to be irregular and therefore, the recovery proceedings are initiated in accordance with the rules in force. Thus, there is no infirmity as such. When the petitioner was not qualified as he did not pass the requisite language test as contemplated under the Rules, the recovery cannot be said to be infirm.

6. This Court is of the considered opinion that the revision of scale of pay and the consequential salary paid from 01.10.1977 to 31.03.2009 is said to be recovered in the impugned order dated 16.02.2012 after a lapse of several years.

7. The learned counsel for the petitioner reiterated that the petitioner had passed the language test in the year 1993 itself and the said information was also provided to the Department also. That being the case, there is no point in recovering the salary of the petitioner by the respondents,



which was paid during the period from 1977 to 2009. This apart, no action has been taken during the relevant point of time. Thus, the order is liable to be set aside.

8. The salary paid to the petitioner by the respondents several years back even by mistake, cannot be recovered beyond the reasonable period of time. Recovery in such circumstances may be issued only if there is a alleged malpractice or misrepresentation on the part of the employee concerned or in the event of undertaking by the employee that he will continue to receive the revision of scale of pay or arrears of pay or otherwise.

9. In the present case, there is no misrepresentation on the part of the writ petitioner. He passed the language test in the year 1993 and the said fact was informed to the departmental officials. The revision of scale of pay was effected in the year 1977 and the petitioner was continuously receiving the salary as per the revised scale of pay. The petitioner reached the age of superannuation during the year 2012. During the fag end of his retirement, the impugned order of recovery had been passed and a lumpsum amount had been recovered from the retiral benefits.

10. In respect of retired employees, the excess amount if any paid long back, cannot be recovered. Further the writ petitioner was appointed in Group-D post and promoted as Junior Inspector of Sericulture, which is Group-C post. In the event of such recovery, the same will result in hardship to the petitioner. Thus, this Court is inclined to consider the relief sought for by the petitioner.

11. Accordingly, the original order of recovery passed by the Assistant Director of Sericulture in proceedings nr.K.e/vz;/1495/M/07 dated 16.02.2012 and the appellate order passed by the first respondent in G.O.Ms.No.135,Handlooms, Weaving, Textiles and Handicrafts (G1) Department, dated 18.06.2013 are quashed. The respondents are directed to repay the recovered amount of Rs.2,33,355/- to the petitioner, within a period of 12 weeks from the date of receipt of a copy of this order.

12. With the abovesaid direction, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

Svn



To

1.The Secretary,
State of Tamil Nadu,
Handlooms, Weaving, Textiles and
Handicrafts (G1) Department,
Secretariat, Chennai - 600 009.

2.The Director of Sericulture,
Salem - 636 001.

3.The Assistant Director of Sericulture,
Denkanikottai,
Krishnagiri District - 635 107.

+1cc to the Government Pleader Sr.No.34526

W.P.No.7429 of 2014

RR(CO)
RVM(17/06/2022)