



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9740 of 2014 and
M.P.No.1 of 2014

G.Vijayalakshmi

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by the Secretary to Government,
Environment & Forests Department,
Fort St.George, Chennai - 600 009.

2.The Member Secretary
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai - 600 032.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying for an issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent in Proc.No.K.Dis./TNPC Bd/Per/P5/045362/2013-2 dated 20.1.2014 and quash the same and direct the 2nd respondent to restore the pay fixation as existed prior to the issue of the impugned order and grant the petitioner all consequential benefits.

For Petitioner : Mr.P.Rajendran

For Respondent : Mr.M.Bindran
No.1 Additional Government Pleader

For Respondent : Mrs.Vijayakumari Natarajan
No.2

O R D E R

The order of revision of scale of pay and consequential recovery issued in proceedings dated 20.01.2014 is under challenge in the present writ petition.

2.The petitioner was working as General Assistant in the Office of the District Environment Engineer, Tamil Nadu Pollution Control Board, Sriperumbudur at Padappai. The petitioner was initially appointed as Typist and promoted as



General Assistant on 25.02.2010. The pay applicable to the said post was granted to the writ petitioner and the fixation was done at the instance of the establishment of the office of the respondents. The learned counsel for the petitioner made a submission that there was no misrepresentation or otherwise on the part of the petitioner with reference to the fixation of pay granted in her favour. The petitioner was receiving the salary as applicable. While so, based on the audit objection, the authorities have initiated action for revision of scale of pay and consequently, imposed recovery.

3.The learned counsel for the petitioner made a further submission that no notice or opportunity was given to the writ petitioner before passing the order of recovery and therefore, the impugned order is in violation of the principles of natural justice. Further, the revision of scale of pay was effected based on the Government Order and there is no error or otherwise. Thus, the writ petition is to be considered.

4.The learned standing counsel appearing on behalf of the respondent pollution control board objected the said contention by stating that once the scale of pay has been erroneously fixed by the establishment, the authorities are competent to revise the scale of pay and fix the correct scale of pay as applicable and thus, the consequential recovery also in accordance with the procedures and therefore, the writ petition is to be rejected.

5.The learned Additional Government Pleader appearing on behalf of the first respondent also reiterated that the authorities competent are empowered to revise the scale of pay once the fixation is found to be wrong.

6.This Court is of the considered opinion that errors can be corrected. Moreso, in the matter of fixation of pay, if there is any mistake or otherwise, the same has to be corrected and the employee is entitled to get the correct scale of pay as applicable to the post, in which, such employee is working. However, if the revision of pay has been granted by the establishment and there is no misrepresentation on the part of the employee concerned and subsequently, if any error is identified, no doubt, the error can be corrected, but the recovery of excess payment after several years is not preferable. Further, in the present case, no notice or opportunity was given to the writ petitioner and thus, the order impugned is in violation of the principles of natural justice. The Courts have held that in the event of excess pay, the same cannot be recovered after a lapse of many years. The writ petitioner is working in Group-C cadre and in the event of recovery, the same would cause hardship to the writ petitioner as the petitioner has already reached the age of superannuation and retired from service during the year 2014 itself. In



respect of the retired employees, excess payment cannot be recovered and in the event of any such recovery, the same will cause hardship. This being the facts and circumstances, the respondents are directed to correct the mistakes, if any, with reference to the fixation of scale of pay as applicable to the writ petitioner and accordingly, pay the correct pension and other consequential benefits. As far as the recovery of excess payment made, the same cannot be done. Thus, the order impugned has to be set aside with reference to the recovery of excess payment already made to the writ petitioner.

7. In view of the facts and circumstances, the order impugned passed by the second respondent in Proc.No.TNPCBd/Per/P5/045362/2013-2, dated 20.1.2014 is quashed with reference to the recovery of excess payment alone and the respondents are permitted to correct the scale of pay as applicable to the petitioner.

8. With this direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

sli/sms

To

1. The Secretary to Government,
The Government of Tamil Nadu,
Environment & Forests Department,
Fort St. George, Chennai - 600 009.

2. The Member Secretary
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai - 600 032.

+1cc to Mrs. Vijayakumari Natarajan, Advocate, S.R.No.35027
+1cc to Mr. P. Rajendran, Advocate, S.R.No.34016
+1cc to the Government Pleader, S.R.No.34530

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GPL (CO)
SB(27/06/2022)