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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.10940 of 2014

C.Mathesu
S/o.Chinnusamy

... Petitioner

Vs.

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

2. The Commissioner of Revenue,
Administration,
Chepauk, Chennai - 5.

3. The Principal Accountant General (A&E),
Office of the Accountant General,
Teynampet, Chennai - 600 018.

4. The District Collector,
Collectorate, Salem - 636 001.

5. The Tahsildar,
Mettur Taluk, Salem District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in proceeding in No.Pr AG(A&E) PEN P26/12615988/5/R2615988 dated 13.11.2013 passed by the third respondent and quash the same and consequently, direct the third respondent to re-fix the petitioner's last drawn salary as Rs.15,670/- and further, direct the respondents to settle the arrears.

For Petitioner : Mr.M.Elango

For Respondents : Mr.S.Prabhakaran
Government Advocate [R1, R2, R4 & R5]
Mrs.Hema Muralikrishnan [R3]



O R D E R

The order passed by the Accountant General of Tamil Nadu/third respondent in proceeding dated 13.11.2013 is under challenge in this present writ petition. Further direction is sought for to refix the petitioner's last drawn salary as Rs.15,670/-.

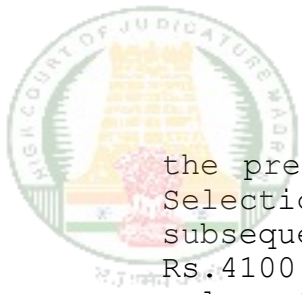
2. The petitioner filed the writ petition after a lapse of two years from the date of his retirement stating that his selection grade date was not granted based on his last drawn pay. The petitioner was allowed to retire from service, without prejudice to the disciplinary proceedings, on 30.06.2011. The petitioner states that one day prior to his retirement, a charge memo was issued to him. After completion of the disciplinary proceedings, the pension was sanctioned in favour of the writ petitioner. Admittedly, now the petitioner is receiving the pension.

3. The grievance of the petitioner is that he is eligible for grant of selection grade based on the last drawn pay and the said selection grade was denied during the relevant point of time. The benefit of selection grade is to be granted taking into account the last drawn pay of the petitioner and therefore, the pension fixed is also incorrect and thus, the petitioner is entitled for the relief.

4. Learned counsel appearing for the petitioner submitted that the proposal submitted by the Tahsildar/fifth respondent was not properly considered as the fifth respondent sent the proposal to revise the pension based on the last drawn pay of the petitioner. Thus, the petitioner is constrained to move the present writ petition.

5. Learned counsel appearing for the third respondent opposed the said contention by stating that on scrutiny of the service records of the petitioner, the third respondent found that the pay of the petitioner was erroneously fixed and the pensionary benefits were authorised based on the actually admissible pay last drawn of Rs.12,600/- (Basic pay of Rs.9,800 + Grade pay of Rs.2,800/-). Pointing out the reason for reduction of Pay Last Drawn and seeking to recover the overpayment from the Death-cum-Retirement Gratuity, the third respondent issued a letter dated 13.11.2013.

6. The third respondent stated that the petitioner was awarded selection grade in the post of Village Administrative Officer on 08.07.2004 while he was drawing a pay of Rs.3,965/- in the pre-revised pay scale of Rs.3,200 - Rs.4,900/- as Village Administrative Officer. On 08.07.2004, his pay has been fixed in



the pre-revised pay scale of Rs.4000-100-6000 applicable to the Selection Grade Village Administrative Officer and granting the subsequent annual increments, his pay as on 31.12.2005 was Rs.4100 + 50 + 173. Therefore, the fixation done during the relevant point of time was considered and the selection grade was also awarded in the post of Village Administrative Officer in favour of the petitioner on 08.07.2004.

7. Learned counsel appearing for the petitioner referred the case of one Mr.Thangavel wherein a higher fixation was granted. The said case is also dealt with by the third respondent and a reply has been given in paragraph No.10 of the counter which reads as under:

"10. ... the petitioner has referred to the case of one Sri.Thangavel and contended that in his case, higher pay and pensionary benefits were admitted. In the absence of the Pension Payment Order Number of Sri.Thangavel, which is the key input to trace the relevant pension records, this respondent is handicapped to review both the cases in comparison. Yet if Sri.Thangavelu is a similarly placed person and his benefits have been admitted at a higher rate, the same would have to be subject to downward revision. In the reverse, the benefits of the petitioner cannot be revised upwards."

8. The third respondent relied on the judgment of the Hon'ble Supreme Court of India in the case of State of Bihar and others v. Kameshwar Prasad Singh and another [(2000) 9 SCC 94], wherein it has been held as follows:

"When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them."

9. The third respondent also relied on the judgment of the Hon'ble Supreme Court of India in the case of Gursharan Singh & Others v. NDMC & Others [1996 (2) SCC 459], wherein it has been held as follows:

"Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on



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equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

10. In the present case, the selection grade was granted in favour of the petitioner on 08.07.2004. Accordingly, his pay was revised in the scale pay of Rs.4000-100-6000 as applicable to the Selection Grade Village Administrative Officer. Subsequently, annual increments were also granted in favour of the petitioner and accordingly, his pay was fixed as Rs.4100+50+173 as on 31.12.2005. Thus, there is no infirmity in respect of fixation approved by the third respondent/Accountant General of Tamil Nadu. This apart, regarding the selection grade benefit of the year 2004, the revised proposal submitted by the Tahsildar in the year 2013 was rejected and the case of Thangavel itself was found to be erroneous and such errors occurred cannot be a ground to claim benefit by the petitioner. This being the factum established, this Court does not find any acceptable ground for considering the relief as such sought for in the present writ petition.

Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary to Government,
Revenue Department,
Fort St.George, Chennai - 600 009.
2. The Commissioner of Revenue,
Administration,
Chepauk, Chennai - 5.
3. The District Collector,
Collectorate, Salem - 636 001.
4. The Tahsildar,
Mettur Taluk, Salem District.



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5. The Principal Accountant General,
Office of the Accountant (A&E),
Teynampet, Chennai - 600 018.

+1cc to Mr.Hema Murali Krishnan, Advocate, S.R.No.37373

+1cc to the Government Pleader, S.R.No.37427

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SKM(CO)
UMA(04/07/2022)