

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9893 of 2014 and
M.P.No.1 of 2014

A.R.Jagatheesan ... 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/P5/005283/2013 dated 10.03.2014 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 all consequential benefits to the petitioner.

For Petitioner : Mr.P.Rajendran

For Respondent : Mrs.S.Anitha
No.1 Special 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 10.03.2014 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, Kappalur, Madurai. The petitioner was

initially appointed as Typist and promoted as General Assistant on 30.09.2008. 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 his 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 Special 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.

7. In view of the facts and circumstances, the impugned order passed by the the second respondent in Proc.No.TNPCBd/Per/P5/005283/2013 dated 10.03.2014 is quashed and the matter is remanded back for fresh consideration. Accordingly, the second respondent is directed to issue a fresh show cause notice setting out the facts and details to the writ petitioner within four weeks from the date of receipt of a copy of this order. The petitioner is at liberty to submit his explanations/objections within a period of two weeks from the date of receipt of the show cause notice to be issued by the second respondent. Thereafter, the second respondent shall consider the case on merits and based on the materials available on record pass appropriate orders as expeditiously as possible.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sli/sms
To

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.

+1 cc to Mr.P.Rajendran, Advocate Sr.NO.34015
+1 cc to Mr.S.Natarajan, Advocate Sr.NO.35028
+1 cc to Government Pleader Sr.NO. 34853

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rgn(CO)
A.SK(11/07/2022)