

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.16046 OF 2014

AND

M.P.NO.2 OF 2014

M.Rajaram

...Petitioner

Vs.

1.The Director General,
Highways Department,
Chepauk, Chennai-5.

2.The Divisional Engineer,
(Highways), (Construction And Maintenance),
Cuddalore.

...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 calling for the records relating to the order of the second respondent made in Proceedings Letter No.1755/ 2013/A3 dated 19.5.2014, quash the same and consequently direct the respondents to extend all benefits of pay fixation already granted and other benefits for all purposes.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.A.M.Ayyadurai
Government Advocate.

O R D E R

The order of refixation of pay and the recovery issued in proceedings dated 19.05.2014 is under challenge in the present writ petition.

2.The petitioner was appointed as Road Inspector Grade - II on 19.10.1981, thereafter, promoted as Road Inspector Grade - I on 21.08.1998.

3.The learned counsel for the writ petitioner made a submission that the selection grade was awarded to the writ petitioner and consequently, his pay was revised by the department. Accordingly, the writ petitioner was receiving salary. Based on the audit objection and without issuing any

show cause notice and opportunity to the writ petitioner, the respondents have taken an unilateral decision and reduced the fixation and issued recovery. Thus, the order impugned is in violation of principles of natural justice. The learned counsel for the writ petitioner reiterated that there was no misrepresentation or otherwise on the part of the writ petitioner and now, he reached the age of superannuation and allowed to retire from service in the year 2018.

4.The learned Government Advocate appearing on behalf of the respondents made a submission that there was an error while revising the scale of pay and excess payment was made to the writ petitioner. Regarding the excess salary paid, the audit party raised an objection and based on the objection, the impugned order has been passed and the excess amount paid is ought to be recovered and there is no infirmity as such in respect of the order impugned.

5.This Court is of the considered opinion that any order affecting the right or service condition of an employee has to be passed only after providing an opportunity to the employee concerned. In the present case, the respondent is unable to establish that a show cause notice and an opportunity was given to the writ petitioner. Thus, the order impugned is in violation of the principles of natural justice. This apart, the authority competent are empowered to correct the mistakes crept in while fixing the scale of pay or revising the same, however, they are bound to correct the said mistakes and excess payment if any paid cannot be recovered after a lapse of many years.

6.In the present case, the petitioner had reached the age of superannuation in the year 2018 and in the event of any such recovery now after lapse of so many years, the same would cause hardship and thus, this Court is inclined to consider the writ petition. Accordingly, the impugned order passed by the second respondent in Proceedings Letter No.1755/ 2013/A3, dated 19.05.2014 is quashed. However, the respondents are directed to fix the correct scale of pay as applicable to the writ petitioner in accordance with the pay rules or the Government orders in force. But the excess pay already paid to the writ petitioner shall not be recovered. Accordingly, the writ petition stands allowed in part. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

sms/sli

To

1.The Director General,
Highways Department,
Chepauk, Chennai-5.

2.The Divisional Engineer,
(Highways), (Construction And Maintenance),
Cuddalore.

+1cc to Mr.L.Chandrakumar, Advocate Sr.No.36038

+1cc to the Government Pleader Sr.No.36181

W.P.No.16046 of 2014 and
M.P.No.2 of 2014

RSI(CO)
RVM(11/07/2022)