IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-06-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.18763 of 2014
And
MP Nos.1, 2 and 3 of 2014

A.Narasaiah .. Petitioner

vs.

1. The State of Tamil Nadu,
   Represented by its Secretary,
   Transport Department,
   Secretariat,
   Chennai – 600 009.

2. The Managing Director,
   Metropolitan Transport Corporation
   (Chennai) Ltd.,
   Pallavan Salai,
   Chennai – 600 002.

3. The Finance Advisor and Principal Accounts
   Officer,
   Metropolitan Transport Corporation
   (Chennai) Ltd.,
   Pallavan Salai,
   Chennai – 600 002.

4. The Administrator,
   Tamil Nadu State Transport Corporation
   Employees Pension Fund Trust,
   Pallavan Salai,
   Chennai – 600 002. .. 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 on the file of the third respondent with regard to the order passed in Letter No.10172/Pension 8/MTC/06 dated 17.02.2007 by which reducing the pension from Rs.3,500/- to Rs.2,000/- and seeking to refund the amount of Rs.54,782/- and quash the same and direct the respondents to grant full pension from the date petitioner retired from service on VRS i.e., from 30.04.1999 by counting the qualifying service for granting pnsion from the date of his first appointment or from the date of enrolment to EPF and to repay the amount of Rs.54,782/- which was recovered from the petitioner with 12% interest per annum.

For Petitioner	:	Mr.V.S.Jagadeesan
For Respondent-1	:	Mr.M.Bindran, Additional Government Pleader.
For Respondents-2 to 4	:	Mr.C.Gowthama Raja

O R D E R

The order of re-fixation and seeking recovery issued by the third respondent in proceedings dated 17.02.2007, is under challenge in the present writ petition.

2. The petitioner was appointed as Sweeper in the year 1968 and was served about 31 years. The petitioner was initially appointed in the erstwhile Transport Department and subsequently transferred to Transport Corporation and got retired from service through VRS i.e., on 30.04.1999.

3. The respondents had fixed the scale of pay and based on the last pay drawn pensionary benefits and pension are granted to the writ petitioner.

4. The learned counsel for the petitioner mainly contended that the qualifying services were erroneously calculated by the third respondent for the purpose of grant of pension and consequently the impugned order has been passed. The total qualifying services of 31 years had not been taken into consideration for the purpose of fixation of pension.

5. The learned counsel appearing on behalf of the respondent-Transport Corporation objected the contentions raised on behalf of the petitioner by stating that initially pay of the writ petitioner was erroneously fixed and subsequently based on the audit objection, the pay was re-fixed and the excess payment made to the writ petitioner is sought to be recovered. In view of the fact that the petitioner had received the excess payment, he is liable to repay the same. Thus, there is no infirmity as such sought for in respect of the order impugned.

6. The learned counsel for the petitioner made a submission that the impugned order has been passed without

issuing any show cause notice and an opportunity to the writ petitioner. Therefore, it is in violation of the principles of natural justice.

7. Any order affecting the right of the employee has to be issued only after providing an opportunity and in the present case, the respondent-Transport Corporation could not establish that the show cause notice was issued providing an opportunity to the writ petitioner to defend his case before passing the order impugned. Thus the order impugned cannot be sustained.

8. The Courts have repeatedly held that even in case of wrong fixation, the excess payment made cannot be recovered from the retired employees. The petitioner was working as Sweeper and in the event of recovery after retirement would result in hardship. That apart, there is no misrepresentation or otherwise on the part of the writ petitioner regarding the erroneous fixation of pay. Under these circumstances, the recovery made is improper and would result in hardship in the event of implementation.

9. Accordingly, the respondents are directed to correct the fixation with reference to the rules in force and accordingly pay the eligible pension and pensionary benefits as applicable to the writ petitioner. The excess payment already paid to the writ petitioner cannot be recovered and if at all any amount had been recovered, the same is to be directed to be reimbursed to the writ petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

10. In view of the facts and circumstances, the impugned order passed by the third respondent in proceedings in Letter No.10172/Pension 8/MTC/06 dated 17.02.2007 stands quashed and the respondents are directed to issue revised fixation order in accordance with the rules and based on the eligibility of the writ petitioner. It is needless to state that if they are passing any such order of fixation, a show cause notice is to be issued to the writ petitioner enabling him to defend his case.

11. With the abovesaid directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   State of Tamil Nadu,
   Transport Department,
   Secretariat,
   Chennai - 600 009.

2. The Managing Director,
   Metropolitan Transport Corporation
   (Chennai) Ltd.,
   Pallavan Salai,
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4. The Administrator,
   Tamil Nadu State Transport Corporation
   Employees Pension Fund Trust,
   Pallavan Salai,
   Chennai - 600 002.

+1cc to Mr.V.S.Jagadeesan, Advocate, S.R.No.37535

+1cc to Mr.C.Gowthamaraja, Advocate, S.R.No.37798

+1cc to the Government Pleader, S.R.No.38239

WP 18763 of 2014

SKM(CO)
UMA(01/07/2022)