



WEB COPY

W.P.No.28013 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.28013 of 2017
and
W.M.P.Nos.30066 & 30067 of 2017

S.Balasubramaniam

... Petitioner

Vs.

1.The Assistant Director of Local Fund Audit,
Tiruvannamalai District.

2.The Commissioner,
Vandavasi Municipality,
Tiruvannamalai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in Na.Ka.No.2044/B1/2016 dated 25.08.2016 passed by the 2nd respondent and quash the same and consequently direct the respondents to disburse the recovered amount to the petitioner with interest.

For Petitioner

: Mr.S.Ilamvaludhi

For R1

: Mrs.R.L.Karthika
Government Advocate

For R2

: Mr.O.Selvam



ORDER

The order of recovery issued in proceedings dated 25.08.2016 passed by the 2nd respondent is sought to be quashed in the present writ petition.

2. The petitioner joined as Pipe Line Fitter on 06.10.1980 in Vandavasi Municipality and his services were regularised from 06.10.1980 itself. The petitioner served in the post of Grade II Fitter and retired from service on 31.08.2020. The impugned order of recovery has been issued on the ground that an excess salary was paid to the writ petitioner on account of erroneous fixation of pay scale. In order to rectify the error the respondents revised the scale of pay of the petitioner and consequently issued an order of recovery.

3. The learned counsel for the petitioner made a submission that the impugned order of recovery has been issued without any show cause notice to the writ petitioner and therefore, the order is in violation of the principles of natural justice. It is contended that the petitioner was holding the post of Group D post and there was no misrepresentation on his part. In view of the mistake committed by the establishment, the petitioner cannot be made to suffer after his retirement.



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4. The learned counsel for the respondent made a submission that the erroneous fixation of pay of the writ petitioner was identified and consequently, the pay was re-fixed and the excess salary paid to him is sought to be recovered. Thus, there is no infirmity in respect of the order impugned.

5. Any order affecting the right of an employee cannot be passed without affording an opportunity to the employee concerned. In the present case, no show cause notice was issued to the writ petitioner and therefore, the order impugned is in violation of principles of natural justice. That apart, there was no misrepresentation or otherwise on the part of the writ petitioner. The petitioner was holding Group D post and he was allowed to retire from service in the year 2020. In the event of recovering the excess salary after retirement, the same would cause extreme hardship to the petitioner, since he is a retired Group D employee.



6. As far as the last grade services are concerned, the excess salary if any paid cannot be recovered after retirement. However, the wrong fixation of pay can be corrected by the authorities and correct pension is to be paid in accordance with the rules. However, the excess salary cannot be recovered now after retirement.

7. This being the facts and circumstances established, the order impugned passed by 2nd respondent in Na.Ka.No.2044/B1/2016 dated 25.08.2016 is quashed and the respondents are directed to fix the scale of pay as applicable to the petitioner in accordance with the rules in force and accordingly, pay the pension and other benefits due to the petitioner. However, the excess salary paid to the petitioner alone shall not be recovered from the petitioner.

8. Pursuant to the recovery order some amount had already been recovered from the monthly salary of the writ petitioner. The respondents are directed to refund the amount already recovered pursuant to the impugned order within a period of eight (8) weeks from the date of a copy of this order.



9. With the above directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Jeni
Index : Yes
Speaking order

To

- 1.The Assistant Director of Local Fund Audit,
Tiruvannamalai District.
- 2.The Commissioner,
Vandavasi Municipality,
Tiruvannamalai District.



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S.M.SUBRAMANIAM, J.

Jeni

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