BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.3949 of 2017

V.Muthaiah ... Petitioner

Vs.

1. The Principal Accounts General,
   (Accounts and Entitlements) Tamil Nadu,
   361, Anna Salai,
   Chennai - 600 018.

2. The Superintendent Engineer,
   Public Works Department,
   Thamirabarani Basin Circle,
   Tirunelveli District.

3. The Executive Engineer,
   Public Works Department (WRO),
   Citraru Basin Sub Division,
   Kudiyiruppu, Kutralam Post,
   Tirunelveli District.

4. The Assistant Executive Engineer,
   Public Works Department (WRO),
   Citraru Basin Sub Division,
   Kudiyiruppu, Kutralam Post,
   Tirunelveli District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the fourth respondent's impugned order Letter No.Ko. 37/*2016*/உசெபொ dated 11.01.2016 and quash the same and to direct the respondents to provide monetary benefits to the petitioner as a Welder Grade-I on Special Grade with effect from 01.01.1996 and refund the deduction of Rs.1,08,873/- from the petitioner's gratuity amount and send necessary recommendation to the first respondent to pay said benefits with revised pension by considering his representation dated 26.11.2015 within a stipulated period.

For Petitioner	:	Mr.A.Haja Mohideen
For Respondents	:	Mr.P.Gunasekaran for R1 Mr.J.John Rajadurai Government Advocate for R2 to R4

O R D E R

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus, to quash the impugned order passed by the fourth respondent in Letter No.Ko.37/2016/உசெபொ, dated 11.01.2016 and consequently, direct the respondents to provide monetary benefits to the petitioner as a Welder Grade-I on Special Grade with effect from 01.01.1996 and refund the deduction of Rs.1,08,873/- (Rupees One Lakh Eight Thousand Eight

Hundred and Seventy Three only) from the petitioner's gratuity amount and send necessary recommendation to the first respondent to pay the said benefits with revised pension, by considering his representation, dated 26.11.2015.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as a Fitter in Nominal Muster Roll under the fourth respondent in 1963. Subsequently, he was absorbed into the service as a Welder in Public Works Department on 24.11.1970 and his service was regularised after completion of ten years on 24.11.1980. He was given Selection Grade Pay and thereafter, Special Grade Pay after completion of twenty years of service on 20.11.1990. Thereafter, he retired from service on attaining the age of superannuation on 31.07.2000. It was claimed that there was excess amount paid and therefore, a sum of Rs.1,08,873/- (Rupees One Lakh Eight Thousand Eight Hundred and Seventy Three only) was deducted from his gratuity amount, without giving opportunity to him. Therefore, this petition.

3. In response, the learned Government Advocate for the respondents 2 to 4 submitted that the recovery was made as early as in 2003 itself and the same was also communicated to the petitioner. However, the petitioner having suppressed the same preferred this Writ Petition nearly 14 years after passing the impugned order. Instead of availing Special Grade-Welder Grade-II pay on 24.11.1990, the petitioner's pay was fixed in the next pay scale for the next promotional avenue of Welder Grade-I post. As such, his scale of pay was wrongly fixed in the cadre of Welder Grade-I post instead of Special Grade Welder Grade-II post, which resulted in payment of excess salary to the petitioner to the tune of Rs.1,08,873/- (Rupees One Lakh Eight Thousand Eight Hundred and Seventy Three only). The petitioner had been receiving the excess salary in the wrong pay fixation upto the date of his retirement dated 31.07.2000. Therefore, the learned Government Advocate relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Chandi Prasad Uniyal and others vs. State of Uttarkhand and others*** reported in ***AIR 2012 Supreme Court 295 1*** that 'any amount paid / received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter

of right'. In the case on hand, the petitioner has not established any extreme hardship and there is no merit in the petitioner's claim. Thus, the learned Government Advocate appearing for the respondents prays for the dismissal of this petition.

4. I have considered the rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

5. As indicated above, the reason for recovery of Rs.1,08,873/- (Rupees One Lakh Eight Thousand Eight Hundred and Seventy Three only) is that instead of availing Special Grade - Welder Grade-II pay on 24.11.1990, the petitioner's pay was erroneously fixed for the next promotional avenue of Welder Grade-I post and that resulted in payment of excess salary. Therefore, the impugned order was passed. It is relevant to extract hereunder paragraph No.16 of the judgment of the Hon'ble Supreme Court of India reported in ***AIR 2012 Supreme Court 295 1:***

*"**16.** We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid / received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."*

6. From the said judgment, it is made clear that there are many situations / circumstances for making excess payments and those payments are made without authority of law. It can be recovered barring few exceptions of extreme hardships. As rightly pointed out by the learned Government Advocate for the respondents that the petitioner has not brought out any hardship so as to resist the recovery. Challenging the recovery order dated 22.01.2003, the petitioner submitted his representation only on 26.11.2015 and that was rejected in 2016. There is a huge delay and latches in challenging the recovery order, dated 22.01.2003. For all these reasons, this Court finds that there is no merit in the petitioner's claim and therefore, this Writ Petition is liable to be dismissed.

7. Accordingly, this Writ Petition is dismissed. No costs.

26.07.2022

Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Principal Accounts General,
   (Accounts and Entitlements) Tamil Nadu,
   361, Anna Salai,
   Chennai - 600 018.

2. The Superintendent Engineer,
   Public Works Department,
   Thamirabarani Basin Circle,
   Tirunelveli District.

3. The Executive Engineer,
   Public Works Department (WRO),
   Citraru Basin Sub Division,
   Kudiyiruppu, Kutralam Post,
   Tirunelveli District.

4. The Assistant Executive Engineer,
   Public Works Department (WRO),
   Citraru Basin Sub Division,
   Kudiyiruppu, Kutralam Post,
   Tirunelveli District.

G.CHANDRASEKHARAN, J.

vji

W.P.(MD)No.3949 of 2017

26.07.2022