IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.10.2022
Pronounced on	02.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.20585 & 26989 of 2012
and M.P.No.1 of 2012

In W.P.No.20585 of 2012:

N.Arasu ... Petitioner

Vs.

1.The Corporation of Chennai
rep. by its Commissioner,
Rippon Building,
Chennai-600 003.

2.The Deputy Commissioner
rep. by its Superintendent Engineer,
Rippon Building,
Chennai-600 003. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the order of the first respondent dated 29.09.2010 in Ka.Thu.Na.Ka.No.E1/3211/2010 and consequential order of the second respondent dated 19.10.2010 in Ka.Thu.Na.Ka.No.E1/3211/2010 and quash the same and consequently direct the respondents to forthwith pay the DCRG benefits with interest from the date of retirement till the date of payment to the petitioner.

In W.P.No.26989 of 2012:

N.Arasu ... Petitioner

Vs.

1.The Corporation of Chennai
rep. by its Commissioner,
Rippon Building,
Chennai-600 003.

2.The Deputy Commissioner
(Local Fund Audit Department),
Rippon Building,
Chennai-600 003. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the order of the second respondent dated 09.04.2010 in Ni.Mu.No.762/A4/2010 and quash the same only insofar as it relates to the clause 1(a) and clause 8(A) and consequently, direct the respondents to pay pension to the petitioner on the basic pay of Rs.30,340/- which was drawn by the petitioner at the time of his retirement.

For Petitioner in both W.Ps.	: Mr.P.Manoj Kumar
For Respondent-1 in both W.Ps.	: Ms.P.T.Rama Devi
For Respondent-2 in both W.Ps.	: Mr.V.Ravi, SGP

COMMON ORDER

The petitioner herein, who was an Assistant Executive Engineer in the respondents' Corporation (Building Department), had retired from the services on 28.02.2009. His entire Death-cum-Retirement Gratuity (DCRG) benefits were withheld by the respondents on the ground that, audit objections and advance adjustments were pending for the year 2001-2002 and 2002-2003. Ultimately, on 29.09.2010, an order came to be passed by the first respondent herein that since the audit objections were pending, his DCRG benefits would be released after closure of the objections. Consequently, on 19.10.2010, the second respondent herein had also passed an order on the same lines. These two orders are challenged in W.P.No.20585 of 2012. Based on the representations given by the petitioner seeking for release of his DCRG benefits, the respondent had sought to recover an alleged excess pay from the petitioner for the period between 01.04.1994 to 28.02.2009 amounting to Rs.80,646/- through the impugned order dated 09.04.2010. This order is put under challenge in W.P.No.26989 of 2012.

2. Heard Mr.P.Manoj Kumar, learned counsel for the petitioner and Ms.P.T.Rama Devi, learned counsel appearing for the first respondent as well as Mr.V.Ravi, learned Special Government Pleader for the second respondent.

3. Since both the Writ Petitions involves withholding the petitioner's DCRG benefits owing to audit objections, they are disposed of, through a common order.

4. The Hon'ble Supreme Court in the case of ***State of Punjab and Others V. Rafiq Masih (White Washer) and Others*** *reported in* ***2015 (4) SCC 334*** has held that, recovery of excess payment made owing to the mistake of the department and not due to the fraud or misrepresentation of the employee, for a period in excess of five years, is impermissible in law. This decision was reiterated in a subsequent judgment of the Hon'ble Supreme Court in the case of ***Thomas Daniel Vs. State of Kerala*** reported in ***2022 SCC Online SC 536***. In the instant case, the audit objections relates to the period between 2001 to 2002 and 2002-2003, which is apparently for a period exceeding five years. The Government in G.O. (Ms) No.104, Municipal Administration

and Water Supply Department, dated 08.07.2005, had ordered the department heads of the Chennai Corporation to take action for clearing audit objections and advance adjustments one year prior to the retirement of the concerned officer and complete the same before his retirement. In cases of disciplinary action, the amount mentioned could be deducted from the DRCG benefits from the concerned employee and the remaining amount has to be released. Admittedly, no departmental action has been initiated against the petitioner even prior to his retirement and thereafter. By laying down the legal ratio laid down in *Rafiq's case, as well as Thomas Daniel's case, (supra)* and in view of the specific directions of the Government in G.O. (Ms) No.104 dated 08.07.2005 to complete the audit objections and advance adjustments prior to one year of the concerned officer's retirement, the action initiated by the respondents in withholding DCRG benefits of the petitioner itself, is illegal.

5. In W.P.No.26989 of 2012, the Legal Fund Auditor of the respondents' Corporation has calculated the excess pay given to the petitioner from 01.04.1994 to 01.04.2000, which amount was already recovered from the petitioner's salary and also recorded in the ledger. While such a specific ground has been raised by the petitioner, the

respondents had not objected to the same. When the excess pay has already been recovered from the petitioner's salary during the year 2000 itself, it would not be permissible for the respondents to recover the excess pay once again, through the impugned order dated 09.04.2010 for the period from 01.04.1994 to 01.04.2000. Since such a payment has already been recovered by the respondents and also that, they have unilaterally revised the basic pay of the petitioner from Rs.30,340/- to Rs.29,770/-, by applying the ratio laid down in the decisions of the Hon'ble Supreme Court referred above, the actions initiated by the respondents, in consequence to the audit objections, cannot be sustained.

6. There is yet another ground also by which the impugned orders are liable to be interfered with. After the audit objections were raised, the impugned orders came to be passed unilaterally, without giving opportunity to the petitioner, on the proposed action. Hence, such actions of the respondents, is clearly in violation to the Principles of Natural Justice.

7. Since the respondents have illegally withheld the gratuity amount payable, the petitioner would be entitled for payment of

statutory interest on the same, at the rate of 10% per annum, as per the provisions of the Payment of Gratuity Act, 1972.

8. For all the foregoing reasons, the impugned orders dated 29.09.2010, 19.10.2010 and 09.04.2010 on the file of the respondents 1 and 2 respectively, are hereby quashed. Consequently, there shall be a direction to the respondents to pass appropriate orders forthwith for disbursement of the DCRG benefits to the petitioner, together with interest at the rate of 10% p.a. from the date of his retirement till the date of the actual disbursement, after deducting any portion of the DCRG benefits that may have been already paid to the petitioner. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

9. In the result, both the Writ Petitions stands allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

02.01.2023

Internet:Yes
Order :Speaking

DP

To

1.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

2.The Deputy Commissioner
rep. by its Superintendent Engineer,
Rippon Building,
Chennai-600 003.

3.The Deputy Commissioner
(Local Fund Audit Department),
Rippon Building,
Chennai-600 003.

M.S.RAMESH,J.

DP

ORDER MADE IN

**W.P.Nos.20585 & 26989 of 2012
and M.P.No.1 of 2012**

02.01.2023