IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.19630 of 2013

S.Krishnamoorthy ...Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by Secretary to Government,
Revenue Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Survey and Settlement,
Chepauk, Chennai – 600 015.

3.The Additional Commissioner of Survey
and Land Records,
Chepauk, Chennai – 600 005.

4.The Assistant Director of Survey
and Land Records, Erode.

5.The Principal Accountant -General (A&E)
Tamil Nadu, Chennai – 600 018. ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Certiorarified Mandamus, calling for the records on the file of the 4th respondent herein in Pro.Na.Ka.No.A6/7593/2012(1) dated 11.1.2013 and to quash the same and to issue consequential directions to the respondents to refund the amount of Rs.71,236/- if the same had already been recovered.

For Petitioner : Mr.M.Ravi

For Respondents
For R1 to R5 : Mr.R.Velusamy
Additional Government Pleader

For R5 : Mrs.J.Sreevidya

ORDER

This writ petition has been filed challenging the order passed by the 4th respondent dated 11.01.2013 in Pro.Na.Ka.No. A6/5793/2012(1) thereby ordered to recover a sum of Rs.71,236/-, as per the revised scale of pay.

2. The petitioner was initially appointed as Junior Assistant on Consolidated Pay basis in the Survey and Land Records Department on

14.12.1982. Thereafter, he was absorbed as Junior Assistant in regular time-scale of pay with effect from 24.06.1984 as per G.O.Ms.No.996. Thereafter, he was promoted as Assistant on 23.06.1989 and Superintendent on 04.04.2012 and he was retired from service on 31.12.2012 afternoon, on attaining the age of superannuation. Due to his retirement, his pension proposal was submitted to the Accountant General. The 2nd respondent, by a communication dated 22.09.2012 instructed the 4th respondent to re-fix the salary in the post of Assistant with reference to the date of regularisation of service from 20.09.1990 instead of from the date of temporary appointment as Assistant i.e. 23.06.1989 and to recover excess salary, if any, from the petitioner.

3. On perusal of counter affidavit filed by the 2nd respondent revealed that while verifying the Service Register of the petitioner it was found that the pay of the petitioner was fixed in the cadre of Assistant with effect from 23.06.1989, the date on which the petitioner was temporarily promoted. Thereafter, he was sanctioned periodical increments from the date of his promotion to the post of Assistant with effect from 23.06.1989. As per Rule 4 under Fundamental Rule 22(B), the initial fixation of pay under F.R.22(B)

shall be allowed in all cases of temporary promotions and in cases wherein the services of a person are regularised from the date of subsequent to the date of initial temporary promotion his pay shall be re-fixed in the higher post under F.R.22(B) with effect from the date of regularisation of services in the higher post and increments if any granted revised and excess pay drawn due to the initial fixation under F.R.22(B) on such temporary promotion shall not be recovered. As far as the petitioner is concerned, his pay was fixed with effect from 23.06.1989, the date on which the petitioner was temporarily promoted.

4. As per Rule 4 under Fundamental Rule 22(B) and as per G.O.Ms.No.558, Personnel and Administrative Reforms Department dated 24.06.1983 his pay should have been re-fixed on the date of regularisation i.e., on 20.09.1990 and future increments should have been regulated based on that date. Therefore, the 2nd respondent by his communication dated 22.09.2012, instructed the 4th respondent to re-fix his pay in the cadre of Assistant from the date of his regularisation namely on 20.09.1990 and to recover the excess amount paid and allowances to him from 01.04.1990. Accordingly, the 4th respondent passed the impugned order dated 11.01.2013 thereby the excess

amount paid to the petitioner from 01.04.1990 to 31.12.2012 which worked out to Rs.71,236/- and House Building Advance interest amount of Rs.1,05,306/-. Therefore, both together amounting to Rs.1,76,542/- was deducted from the petitioner's Death cum retirement gratuity amount of Rs.5,01,294/- and the remaining amount was credited to his account.

5. In fact, the application dated 30.11.2012 submitted by the petitioner was thereby consented to recover the excess payment and allowances if any, on account of re-fixation of his pay and also for the pending amount of the House Building Advance interest amount. The petitioner was duly served with order of recovery dated 11.01.2013. It was duly served and acknowledged by the petitioner on 18.01.2013. Therefore, it is seen that on the one hand he had given consent for recovery while re-fixing his pay and on the other hand he challenged the order of recovery that too without challenging the order passed by the 2nd respondent dated 22.09.2012. Therefore, this Court finds no infirmity or illegality in the order passed by the 4th respondent and this writ petition is devoid of merits.

6. Accordingly, the writ petition stands dismissed. There shall be no order as to costs.

03.08.2023

Speaking/Non-Speaking
Index: Yes/No
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To

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3.The Additional Commissioner of Survey and Land Records,
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G.K.ILANTHIRAIYAN,J.

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