



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.16997 of 2018

S.Ponmozhi

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Transport (H1) Department,
Secretariat,
Chennai - 600 009.

2.The Director,
Motor Vehicle Maintenance Department,
Velachery,
Chennai - 600 042.

3.The Automobile Engineer,
Government Automobile Workshop,
Court Road,
Tanjore - 613 001.

... Respondents



WEB COPY

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 3rd respondent to return the amount of Rs.71,689/- with interest right from 04.05.2018 and also pay the interest for the retirement benefit amount of Rs.6,73,002/- right from the day of the petitioner's retirement 01.08.2013 to 04.05.2018 of releasing the amount.

For Petitioner : Mr.R.Marudhachalamurthy
For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

This Writ Petition has been filed seeking for a direction to the 3rd respondent to return the amount of Rs.71,689/- with interest right from 04.05.2018 and also pay the interest for the retirement benefit amount of Rs.6,73,002/- right from the day of the petitioner's retirement 01.08.2013 to 04.05.2018 of releasing the amount.



WEB COPY

2.It is the case of the petitioner that the petitioner worked as a Special Grade Chargeman in the 3rd respondent Automobile workshop. As per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, the Government has revised the scale of pay with retrospective effective from 01.01.1996 and thereby, the pay scale was revised from Rs.5,150/- to 5,300/-. Further, the petitioner had a rent due of Rs.42,783/- to the Government Servants Housing Board. He retired from service on 31.07.2013. At that time, the petitioner gave an undertaking letter dated 03.12.2013 to deduct the rent due from the retirement benefits and the 3rd respondent had issued No Due Certificate in favour of the petitioner. After retirement, the petitioner received communication from the Principal Account General (A&E) Teynampet, Chennai dated 16.09.2013, wherein it was calculated the retirement benefit as Rs.6,73,002/-.

3.On the basis of communication dated 16.09.2013 of the 3rd respondent addressed to the 2nd respondent and requesting him to pass an



order to deduct the amounts from his retirement benefit viz., the rental due to the Government Housing Board of Rs.42,783/- and the amount which had been paid from 01.01.1996 to 31.07.2013 on account of revised pay of Rs.5,300/- under G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998.

4.From the abovesaid order dated 16.09.2013 and in continuation of the same, the proceedings of the 3rd respondent dated 29.10.2013 to the 2nd respondent are not correct and therefore, the respondents are not entitled to recover the amount from the petitioner even if it is wrongly given. Moreover, before deducting any amount from the retirement benefit, it is the duty of the Authority who deduct the amount from the retirement benefit has to give a Show Cause Notice before doing the same, But it was not followed and the retirement benefit also withhold by them for several years. The petitioner requested the respondents to release his retirement benefit of Rs.6,73,002/-, after deducting the liability of Rs.42,783/-, the petitioner is entitled to get the amount of Rs.6,30,219/- as his retirement benefit, but due



WEB COPY

to the delay on the part of the respondents, the petitioner filed a Writ Petition in W.P.No.30583 of 2013 and this Court set aside the order dated 16.09.2013 passed by the Principal Account General (A&E), Teynampet, Chennai as well as the order of 3rd respondent dated 29.10.2013 with a direction to issue show cause notice and follow due process of law before passing any order and remand back the same to the respondents.

5. Thereafter, a show cause notice was issued to the petitioner and the petitioner submitted his reply dated 31.07.2017 and sought for the payment of his retirement benefits. On the basis of the order of the Supreme Court, the respondents did not consider his representation. Hence, this Writ Petition came to be filed.

6. The learned Additional Government Pleader appearing for the respondents would submit that the petitioner while serving as Special Grade Chargeman, his pay was fixed at Rs.5,300/- w.e.f 01.01.1996 as per G.O.Ms.No.162 dated 13.04.1998 and his pay was subsequently revised as



WEB COPY

per G.O.Ms.No.234, Finance (Pay cell) Department, dated 01.06.2009 at Rs.13,360/- with Grade pay of Rs.4,500/- as on 01.01.2006. The pay last drawn by him on the date of his retirement on 31.07.2013 was Rs.18,550/- + Rs.4,500/- G.P. The pension proposal was submitted to the Accountant General to authorize his pension and the Accountant General in his pension admissibility report dated 16.09.2013 while allowing his retirement benefits restricted the pay drawn by him as on 31.07.2013 at Rs.18,160/-+4500 G.P. In view of the reason that his pay as on 01.01.1996 was wrongly fixed as Rs.5300/- instead of Rs.5150/- as per the clarification issued in Government letter dated 09.09.2008.

7.The Accountant General also requested to review and revise the pay fixation w.e.f. 01.01.1996. The pay of the petitioner was revised as per the Government orders and based on the remarks of the Accountant General in his proceedings dated 04.12.2013 and thereby recovery statement prepared to recover a sum of Rs.71,689/-. The 3rd respondent based on this recovery



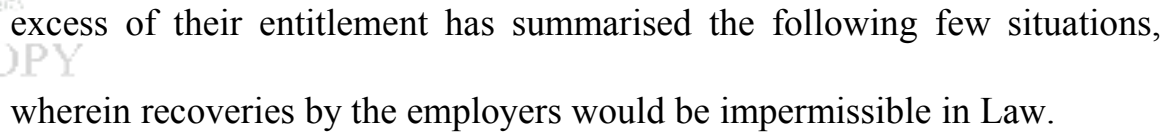
WEB COPY

statement sought for clarification from the 2nd respondent for the recovery from his DCRG. Thereafter, the petitioner filed a Writ Petition before this Court and as per the orders of this Court, the respondents issued a show cause notice and the petitioner submitted his reply and in his reply, he sought for the payment of his retirement benefits on the basis of the order of the Supreme Court. In this case, the petitioner was not wrongfully allowed to work in the higher category but his pay was wrongly fixed in the appointed post and ordered for recovery and the said recovery is proper. Therefore, the show cause notice together with the representation of the petitioner has been examined and the petitioner already gave an undertaking that he promised to repay the excess amount. In view of the above undertaking by the petitioner, the petitioner bound to repay the excess amount paid to him to the Government. The said amount was ordered to be adjusted from his DCRG. The balance amount of Rs.5,58,530/- paid to him on 04.05.2018. The other retirement benefits, such as, retirement surrender, G.P.F, commutation and pension etc., were paid to him immediately after



his retirement. Of the above recoveries, the petitioner admitted the rent recovery and therefore, the excess paid salary of Rs.71,689/- is alone in dispute.

8. On a perusal of the available records, it is seen that as per the direction of this Court in W.P.No.30583 of 2023 dated 01.06.2017 the respondents issued a show cause notice to the petitioner and the petitioner also filed a reply and thereafter, the respondents passed a recovery proceedings for a sum of Rs.71,689/- being the excess payment paid as salary from 01.01.1996 as on 31.07.2013 and a sum of Rs.42,783/- being the amount arrear rent with penalty payable to the Housing Board Rental Quarters occupied by the petitioner. This amount was order to be adjusted from the DCRG amount. Further, as per the order of the Supreme Court in **State of Punjab and others, etc., v. Rafiq Masih (white washer) etc.,** in C.A.No.11527 of 2014, while observing that it is not possible to postulate all the situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly being made by the employer, in



(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.



WEB COPY

In view of the law declared by the Courts, the Government of Tamil Nadu passed G.O.Ms.No.286, Finance (Pension) Department dated 28.08.2018. As per Government Order, the petitioner is entitled for return of amount of Rs.71,689/- with interest. Further, it is seen that the petitioner filed a Writ Petition before this Court in 2013 and the same was disposed of in the year 2017 and the petitioner is not entitled for any interest. When the last drawn salary was questioned that has to be refixed by the respondents immediately. Accordingly, this Writ Petition is disposed of. No costs.

07.11.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
mps

To

1. The Additional Chief Secretary to Government,
Transport(H1) Department,
Secretariat, Chennai - 600 009.

10/12



WEB COPY

2.The Director,
Motor Vehicle Maintenance Department,
Velachery, Chennai - 600 042.

3.Automobile Engineer,
Government Automobile Workshop,
Court Road, Tanjore - 613 001.



WEB COPY



V.BHAVANI SUBBAROYAN, J.

mps

W.P.No.16997 of 2018

07.11.2023