IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:05.06.2023	Delivered on: 09.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.7302 of 2017

P.Gunasekaran ... Petitioner

Vs.

1.State of Tamil Nadu
Rep by Additional Chief Secretary to Government , Finance
(Treasuries & Accounts) Department,
Secretariat, Chennai-600 009

2.The Commissioner/Director of Treasuries and Accounts
Chennai-600 015 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to orders in (1) G.O.(2P) No.40, Finance (T&A-2) Department dated 19.007.2016 of the 1st respondent and (2) Na.Ka.No.44449/2012/Q3-3 dated 25.03.2015 of the 2nd respondent, quash the same and issue consequential directions to the respondents to restore the increment postponed due to the impugned order and to grant all consequential benefits to the petitioner.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.M.Shahjahan, SGP

ORDER

The petitioner seeks issuance of a Writ of Certiorarified Mandamus calling for records in (1) G.O.(2P) No.40, Finance (T&A-2) Department dated 19.007.2016 of the 1st respondent and (2) Na.Ka.No.44449/2012/Q3-3 dated 25.03.2015 of the 2nd respondent .and quash the same and to consequently direct the respondents to restore the increment postponed due to the impugned order and to grant all consequential benefits to the Writ Petitioner.

2. The petitioner's case is that he joined service as Junior Assistant in the Treasuries and Accounts department on 04.09.1998 and thereafter he was promoted as Assistant/Accountant on 24.12.2008 and then as Superintendent on 30.11.2012.

3. The 2nd respondent initiated disciplinary proceedings u/r 17(b) of the Tamil Nadu Civil Services (D&A) Rules in Na.Ka.No.4449/2012/Q3-3 dated 05.03.2013 in respect of an alleged excess payment of monthly pension to a teacher, one Tmt.A.Sironmani, viz., a sum of Rs.10,567/- per month was being paid instead of the eligible and actual amount of Rs.5,999/- to be paid. It is the case of the petitioner that he assumed charge in the concerned section on 18.07.2009 and his predecessor one Gurusamy the then Accountant had already disbursed the same amount and no new or independent decision was taken by the petitioner. The petitioner was only a subordinate official who cannot verify the correctness of the fixation of pension and therefore the the impugned order passed without adverting to the valid objections made by the Writ Petitioner were called in question in the Writ Petition.

4. The 2nd respondent filed a counter stating that the petitioner has caused wrongful loss by disbursing higher amount to a teacher. However, the following statements in the counter affidavit of the 2nd respondent assume relevance.

> *".... The petitioner herein was not imposed any recovery of amount as he is not responsible for the wrong fixation of pension. But he has failed to act as a responsible Government servant to take action during the course of Regional Joint Director's Audit, held during August 2010 to effect recovery of the excess paid amount to the pensioner, and his lethargic attitude in discharging official duties has caused loss to Government."*

5. Learned counsel for the petitioner contended that the respondents themselves had chosen not to take any action against the petitioner and therefore the impugned order was clearly liable to be set aside.

6. Heard Mr.M.Ravi, learned counsel appearing for the petitioner and Mr.M.Shahjahan, learned SGP appearing for the respondents.

7. This Court finds that apart from the statement made by the 2nd respondent extracted herein above with specific reference to the Writ Petitioner, this Court also finds that the amount paid in excess has admittedly

been recovered from the legal heirs of the predecessor of the Writ Petitioner. Therefore, there is no loss actually suffered by the respondents. Further more, the respondents have specifically admitted to the fact that the petitioner cannot be held responsible since the error had crept in even prior to his assuming charge in the concerned section. The argument of the learned counsel for the petitioner that being an subordinate Accountant it would not be proper for him to question the actions or correctness of the action of his predecessor or superiors also cannot be brushed aside. Moreover, in the instant case, admittedly the amounts which have been paid in excess had been recovered from the legal heirs of the predecessor of the writ petitioner. This coupled with the fact that the respondents themselves have chosen not to initiate any recovery proceedings against the Writ petitioner only goes to show that the Writ Petitioner cannot be found fault with.

8. Learned counsel for the petitioner relied on the following judgments:

1. ***Civil Appeal No.7433 of 1995*** in the case of ***Punjab National Bank***

and Ors Vs. Kunj Behari Misra and another. In the said case the Hon'ble Supreme Court held that when the disciplinary authority disagrees with the enquiry authority, then, before it records it own findings on such charge the disciplinary authority must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records it findings.

2. In ***W.A.No.1674 of 2017, K.Jayaprakash Vs. Government of Tamil Nadu, Rep by the Principal Secretary to Government and another.*** The Hon'ble Division Bench of this Court following earlier pronouncements held that when the disciplinary authority decides to differ from the conclusions of the enquiry officer, then it has to record the fact that it proposes to differ and give reasons for the same and call upon the delinquent officer to explain as to why it should not differ. Thereafter, it will be open to the delinquent officer to persuade the disciplinary authority to agree with the conclusion of the enquiry officer. The Division Bench further held that if the disciplinary authority records its conclusions, the further opportunity contemplated would become an empty formality. The ratio in ***Punjab***

National Bank's case referred above was also applied and followed by the Division Bench of this Court.

9. In the present case also the findings of the enquiry committee were in favour of the Writ petitioner and they found that the charge levelled against the writ petitioner was not proved. Though in the charge memo issued by the 2nd respondent on 13.01.2014 in Rc.No. 44449/2012/Q3 the disciplinary authority has expressed that it disagrees with the findings of the enquiry officer, the reasons cited in the said memo are fallacious and without any materials whatsoever. No independent reasons have been assigned by the 2nd respondent. This is in clear violation of the ratio laid down by the Hon'ble Supreme Court in ***Punjab National Bank's*** case and also followed by Division Bench of this Court. Under such circumstances, this Court is inclined to allow the Writ Petition and accordingly the impugned order passed in (1) G.O.(2P) No.40, Finance (T&A-2) Department dated 19.07.2016 on the file of the 1st respondent and (2) Na.Ka.No.44449/2012/Q3-3 dated 25.03.2015 of the 2nd respondent are set aside and the respondents are hereby directed to

restore the increment postponed by reason of the impugned order and to grant consequential benefits to the writ petitioner. No costs.

09.06.2023.

Internet:Yes
Index:Yes/No
Speaking order
Neutral Citation:Yes/No
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To
1.The Additional Chief Secretary to
Government , Finance
(Treasuries & Accounts) Department,
State of Tamil Nadu
Secretariat, Chennai-600 009

2.The Commissioner/Director of Treasuries
and Accounts
Chennai-600 015

P.B.BALAJI, J.,
kpr

Pre-delivery order in W.P.No.7302 of 2017

09.06.2023