IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.33338 of 2022
and
W.M.P.Nos.32776 of 2022 & 1852 of 2023

K.Subramaniyan ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George, Chennai – 600 009.

2.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai – 600 005.

3.The Secretary cum General Manager,
Tamil Nadu Water Supply and Drainage Board,
Head Office, Chepauk, Chennai – 600 005.

4.The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
Circle Office, Ganapathy Nagar,
Medical College Road, Thanjavur.

5.The Executive Engineer,
RWS Division,
Tamil Nadu Water Supply and Drainage Board,
Ganapathy Nagar,
Medical College Road, Thanjavur.

6.The Principal Accountant General Audit-II,
O/o. The Principal Accountant General Audit-II,
Lekha Pariksha Bhavan,
361, Anna Salai, Chennai – 600 018. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the report of the 6th respondent dated Nil, signed on 07.10.2022 bearing reference No. Nil, re-fixing the petitioner pay w.e.f. the date of his joining the 2nd respondent Board on 06.8.1971 read with the consequential proceedings of the 3rd respondent dated 27.10.2022 vide Letter No.P6/ 60505/Pension/HO/2010 ordering reduction of petitioner's pension, DCRG, Commutation value and ordering recovery read with proceedings dated 27.10.2022 bearing reference Letter No. P6/60505/Pen/HO/2010 -1 and Letter No.60505/Pension/P6/tha.Aa/2016, 4th respondent's proceedings bearing reference No. Lr.No.1321/Pension/A1/S.E.Thanjai/ 2022-1 dated 07.11.2022 ordering recovery of excess pension and commutation value of pension of Rs.27,14,237/-, 5th respondent's proceedings Lr.No.411/Ko.K.Subramanian/2022/Ni.Vu dated 04.11.2022 directing petitioner to pay Rs.3,39,026/- and proceedings of the 5th respondent Lr.No.6154/Divisional Engineer/Pa.a/2016 dated 21.11.2022 to repay the alleged excess payment of salary from 06.08.1981 to 30.09.2020 amount to Rs.14,15,642 & Rs.1,94,755 and quash the same as illegal, arbitrary, without jurisdiction and to consequently, direct the respondents 2 to 5 to pay benefits to the petitioner as per the proceedings of the 5th respondent Ref.Proc.No.950/F.Asst./EA/2019-1/EE-RWS-TNJ, dated 30.05.2019, in terms of 7th Pay Commission together with arrears.

For Petitioners	:	Mr.N.G.R.Prasad for Mr.K.Srinivasa Murthy for M/s.Row and Reddy
For R1	:	Mr.P.Baladhandayutham Special Government Pleader
For R2 to R5	:	Mr.P.Wilson Senior Counsel for Mrs.Y.Kavitha
For R6	:	Mr.V.Vijay Shankar

O R D E R

This writ petition has been filed challenging the orders passed by the respondents, re-fixing the petitioner's pay w.e.f. the date of his joining the 2nd respondent Board on 06.8.1971 and ordering reduction of petitioner's pension, DCRG, Commutation and ordering recovery of excess pension and commutation value of pension and ordering repayment of the alleged excess payment of salary from the petitioner and for a direction to the respondents 2 to 5 to pay the benefits to the petitioner in terms of 7th Pay Commission together with arrears.

2.The petitioner states that he joined the 2nd respondent/Tamil Nadu Water Supply and Drainage Board ("TWAD Board" for brevity) on 06.08.1971 as Work Inspector Grade-I and was subsequently promoted as

Junior Assistant and then as Assistant and retired from service on 30.09.2010 on attaining the age of superannuation. It is the case of the petitioner that, originally, the respondents fixed the salary of the petitioner at Rs.24,960/- with effect from 01.01.2006 vide proceedings dated 27.10.2010. However, thereafter, the salary was reduced to Rs.18,760/- by proceedings dated 08.02.2011, perhaps, based on an Audit Report. It appears that thereafter, the petitioner has pursued several rounds of litigations by filing writ petitions before this Court, challenging various orders passed by the respondents re-fixing the salary of the petitioner on various occasions and reducing the pension from the originally fixed value.

3.Ultimately, based on the recommendations of the One Man Committee, the 5th respondent, vide proceedings dated 30.05.2019, revised the petitioner's pension, however, the same was not given effect to. Therefore, the petitioner filed three writ petitions in W.P.(MD) Nos.16315, 8354 of 2019 & 20992 of 2021 to sanction the revised pay and pension as per the proceedings dated 30.05.2019; to quash the proceedings of the 3rd respondent, dated 28.03.2019, reducing the petitioner's pension from Rs.17,285/- to Rs.14,235/- w.e.f. March, 2019 and ordering recovery, and to quash the proceedings of the 4th respondent, dated 20.10.2021, reducing petitioner's pension from Rs.44,430/- to Rs.36,590/- with retrospective effect from March, 2019 to September, 2019 and ordering recovery. All the three writ petitions were disposed of by this Court vide common order dated 28.04.2022, quashing the impugned orders therein and directing the 6th respondent/Accountant General to conduct enquiry in respect of the correctness of the pay fixation and payment of arrears of salary, terminal benefits, pensionary benefits, etc., and to fix correct scale of pay as per Rules, by providing one opportunity of personal hearing to the writ petitioner and to the TWAD Board.

4.However, the grievance of the petitioner is that, instead of confining the period of reduction that was challenged in the writ petitions, viz., w.e.f. March, 2019, the 6th respondent has gone one step behind and re-fixed the petitioner's pay from the date of his joining, i.e., 06.08.1971 and reduced the pay and pension to Rs.10,200/- from Rs.17,285/- which was already fixed and ordered recovery towards excess payment. Since the petitioner has been placed in a worse position than it actually was, even before the orders of this Court in the above said writ petitions, the petitioner has filed the present writ petition.

5.Though several grounds have been raised by the petitioner in the writ petition, the main ground on which the learned counsel appearing for the petitioner focused his arguments is that the objections raised by the petitioner were not considered and the petitioner was not given an opportunity of personal hearing before passing the impugned orders and more particularly, the proceedings of the TWAD Board, dated 28.06.1999, was not taken into consideration. The learned counsel contended that, now, the pay and pension of the petitioner has been reduced much lower than what he was receiving even before the directions of this Court in earlier writ petitions.

6.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

7.This Court, in the earlier writ petitions filed by the petitioner in W.P.(MD) Nos.16315, 8534 of 2019 & 20992 of 2021, quashed the recovery orders impugned therein and passed the following order on 28.04.2022 :

(i) "The impugned orders of recovery passed by the 3rd respondent in W.P.(MD) No.8354 of 2019 and the 4th respondent in W.P.(MD) No.20992 of 2020 are quashed;

(ii) The petitioner and the respondents 1 to 5 are at liberty to submit the facts, circumstances, documents, and materials available on record before the 6th respondent within a period of two weeks from the date of receipt of a copy of this order.

(iii) The 6th respondent / Principal Accountant General Audit-II, is directed to conduct an enquiry in respect of the correctness of pay fixation and payment of arrears of salary, terminal benefits, pensionary benefits etc., to the writ petitioner and pass appropriate orders, fixing the correct scale of pay as per the rules in force.

(iv) The Principal Accountant General Audit-II, is directed to provide one opportunity of personal hearing both to the writ petitioner and to the respondent Board to present their respective cases. The date, time and venue of the enquiry fixed may be communicated to the parties.

(v) The 6th respondent is directed to complete the said exercise of completion of enquiry and passing final orders within a period of six weeks from the date of receipt of a copy of this order.

(vi) The respondents 1 to 5 are directed to initiate all appropriate actions based on the orders passed by the 6th respondent / Principal Accountant General Audit-II. If at all any collusion, irregularity, illegality or misrepresentations are traced out by the respondents, regarding the fixation or otherwise, then all appropriate actions are to be initiated to

recover the financial loss caused to the respondent Board and initiate departmental disciplinary proceedings against the erred officials, who all are responsible and accountable for such financial loss to the Board."

Pursuant to the above, the Accountant General has furnished a report pointing out four instances which had resulted in incorrect fixation of pay and excess payment of pay and allowances to the petitioner, and based on the same, pension has been reduced. The report of the Accountant General and the order reducing the pension are challenged in the present writ petition.

8.The grievance of the petitioner is that, despite directions by this Court to give an opportunity of personal hearing, no such opportunity was given to the petitioner to put forth his case and though several objections were raised by the petitioner with necessary proceedings and Government Orders to substantiate the case of the petitioner, the same have not been considered by the Accountant General.

9.Learned Senior Counsel appearing for the TWAD Board submitted that continuous attempts are being made by the petitioner to prolong the litigation and this is the fourth petition filed by the petitioner to defeat the orders passed by the respondents.

10.On a perusal of the impugned order, this Court is of the view that it is only fixation of pension. The petitioner has brought to the notice of this Court certain proceedings and Government Orders, especially, the proceedings of the TWAD Board in Pro.No.107688/Estt(Per)/A1/98 dated 28.06.1999, which according to the petitioner, has not been taken into consideration by the Accountant General, while fixing the pay and pension of the petitioner. The impugned order indicates that, though opportunity was given, only documents have been received and no personal hearing was afforded to the petitioner. The petitioner's main grievance is that he was not given personal hearing to explain his case based on the various Government Orders and proceedings relied upon by him and the manner in which the pay fixation ought to have been done according to him, as annexed in the form of a Chart at Page Nos.42 to 51 in the Typed Set of Papers filed along with this writ petition. Since the issue involved in the present case is related to fixation of pension and also recovery of huge amount, in order to ensure correct fixation of pay and pension, this Court, without going into the merits of the case of the petitioner, is inclined to grant one more opportunity of personal hearing to be given to the petitioner to explain the manner in which pay fixation is to be done according to him, from the inception, based on various Government Orders and proceedings.

11.Accordingly, the writ petition is disposed of with the following directions :

i. The impugned orders of fixation of pension and recovery of excess payment, are quashed and the matter is remanded back to the 6th respondent.

ii. The 6th respondent-Accountant General is directed to afford an opportunity of personal hearing to the petitioner. For this purpose, the petitioner shall appear before the Accountant General on 07.08.2023 and the petitioner is at liberty to produce all documents/Government orders/proceedings which he relies upon. It is open to the Accountant General to hold any further hearings for clarification, if required.

iii. The TWAD Board is also at liberty to furnish their particulars and records before the Accountant General.

iv. After affording such opportunity of personal hearing to the petitioner, the Accountant General shall fix the pay and pension of the petitioner, taking into consideration all the Government Orders/proceedings/documents relied upon by the petitioner in his objections and produced by him at the time of personal hearing, and also in terms of the earlier orders of this Court in W.P.(MD) Nos.16315, 8534 of 2019 & 20992 of 2021, dated 28.04.2022.

v. In any event, the entire exercise of fixation of pension shall be done by the Accountant General within a period of one month from 07.08.2023.

No costs. Consequently, connected miscellaneous petitions are closed.

26.07.2023

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Internet : Yes
Index : Yes / No
Neutral citation : Yes / No
Speaking order / Nonspeaking order

To

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O/o. The Principal Accountant General Audit-II,
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361, Anna Salai, Chennai – 600 018.

N. SATHISH KUMAR, J.

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W.P.No.33338 of 2022

26.07.2023