



W.P.(MD) No.3479 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) No.3479 of 2020

G.Kumaramuthu

... Petitioner

-VS-

- 1.The Director General of Police,
Chennai 4
- 2.The Inspector General of Police,
Training, Chennai.
- 3.The Principal/Superintendent of Police,
Police Recruit School
Perurani
Thoothukudi District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned letter NO.C.No.A2/310/PRS/TUT/2019 dated 30.09.2019 and Na.Ka.No.A2.310/2019 dated 06.09.2019 issued by the 3rd respondent and quash the same consequently direct the respondents to sanction increment for the retrospective dates of promotion in Grade-I Police Constable and Head Constable posts and also refund a sum of Rs.1,17,297/- recovered from the



W.P.(MD) No.3479 of 2020

DCRG of the petitioner with 12% interest as payment of pensionary benefits delayed for more than 5 months.

For Petitioner : Mr.A.Gandiappan
For Respondents : Mrs.K.Christy Theboral
Additional Government Pleader

ORDER

The petitioner challenges the impugned order of the 3rd respondent dated 06.09.2019 and for a direction to the respondents to sanction increment for the retrospective dates of promotion in Grade-I Police Constable and Head Constable posts and also refund a sum of Rs.1,17,297/- recovered from the DCRG of the petitioner with 12% interest as payment of pensionary benefits delayed for more than 5 months.

2. The case of the petitioner in nutshell is as follows:

The petitioner was appointed as Grade II Constable on 19.12.1979, promoted as Grade I Constable on 24.11.1994 and as Head Constable on 24.11.1999. Subsequently he was promoted as Special Sub Inspector of Police on 07.01.2010 and Sub Inspector of Police on 02.02.2015 and retired on attaining the age of superannuation on



W.P.(MD) No.3479 of 2020

WEB COPY

30.04.2019. It is his further case that at the time of retirement, the petitioner basic pay was Rs.55,700/- and as such his last drawn pay has to be calculated for the purpose of pension. While so, his pay was erroneously fixed at Rs.54,100/- instead of Rs.55,700/- and a recovery to the tune of Rs.1,17,297/- was ordered to be recovered from his DCRG by way of the impugned order, challenging which, the petitioner is before this Court with this writ petition.

3. The learned counsel for the petitioner would submit that the petitioner received the salary as per G.O.Ms.No.844 dated 03.06.1997. However, his basic pay was wrongly fixed as Rs.54,100/- instead of Rs.55,700/- for calculating pension. It is his further submission that without hearing the petitioner and without giving opportunity to the petitioner, the impugned order has been passed, which is in violation of principles of natural justice. It is his further submission that the petitioner never misrepresented to receive the higher pay from 2019 onwards and hence, it cannot be reduced and interference is warranted.



W.P.(MD) No.3479 of 2020

WEB COPY

4. The learned Additional Government Pleader would submit that pension proposal of the petitioner was sent to the Accountant General taking into account the basic pay of Rs.55,700/-. However, it was returned stating that there was wrong fixation of pay and stepping up of pay on par with his batch-mate Pauldurai and while comparing his pay with one Dharmaraj, it was found that the same was not in order. It is further stated that during the year 1998, the pay should be Rs.3,540/-, instead it has been wrongly calculated as Rs.3,710/- and hence, the basic pay has been wrongly drawn at Rs.55,700/-, which is ought to have been fixed at Rs.54,100/- and hence, in order to recover the overdrawn pay and allowance, the present impugned order has been passed. It is also contended that since as per Section 70 of the Tamil Nadu Pension Rules, the overdrawn pay and allowances are to be adjusted only in DCRG and hence, the impugned order of recovery is perfectly in order and no interference is warranted.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.



W.P.(MD) No.3479 of 2020

WEB COPY

6. The appointment of the petitioner and his upgradation, promotion and also his retirement on 30.04.2019 are not in dispute. After superannuation, he is entitled to receive his retirement benefits. However, it is the case of the respondents that the pension proposals have been returned on the ground of wrong fixation of pay and in order to adjust the overdrawn pay and allowances, the recovery order has been passed. The only issue to be decided in this case is whether the recovery order passed is perfectly in order or not. It is the case of the petitioner that there is no misrepresentation on the part of the petitioner to receive the excess pay. The pay has been fixed in consonance with the G.O. at the relevant point of time.

7. It is seen that neither giving opportunity nor hearing the petitioner, the impugned order is given. When similar issue came up for consideration before the Apex Court with regard to recovery in ***State of Punjab v. Rafiq Mashi, [2015 (4) SCC 334]***, the Apex Court has held as follows:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue



W.P.(MD) No.3479 of 2020

of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(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.”



W.P.(MD) No.3479 of 2020

WEB COPY

Applying the said ratio, this writ petition is allowed and the impugned order is set aside. However, there is no order as to costs.

20.01.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

RR

To

- 1.The Director General of Police,
Chennai 4
- 2.The Inspector General of Police,
Training, Chennai.
- 3.The Principal/Superintendent of Police,
Police Recruit School
Perurani
Thoothukudi District.



WEB COPY



W.P.(MD) No.3479 of 2020

M.DHANDAPANI, J.

RR

W.P.(MD) No.3479 of 2020

20.01.2023