



W.P.(MD) No.17154 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 19.07.2023

ORDERS PRONOUNCED ON : 26.07.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.17154 of 2016

and

W.M.P.(MD) No.12438 of 2016

R.Keasavan Kutty Nair

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep., by its Principal Secretary,
Finance Department, Secretariat, Chennai.
- 2.The State of Tamil Nadu,
Rep., by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai.
- 3.The Deputy Director of Health Services,
O/o. The Deputy Director of Health Services Office,
Sakarankovil, Thirunelveli District.
- 4.The Treasury Officer,
O/o. The Treasury Office,
Vilavankodu at Kulithurai,
Kanyakumari District.



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5. The Assistant Treasury Officer/
Public Information Officer,
O/o. The Treasury Office,
Vilavankodu at Kulithurai,
Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, forbearing the respondents from recovering any amount from the retirement benefit of the petitioner and consequentially to direct the fourth and fifth respondents to repay the recovered amount from the retirement benefit of the petitioner within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imaran
for M/s.Ajmal Associates

For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

This writ petition has been filed seeking Writ of Mandamus forbearing the respondents from recovering any amount from the retirement benefits of the petitioner and for a consequential direction to Respondents No.4 and 5 to repay the recovered amount from the retirement benefit of the petitioner in the interests of justice.



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2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

3. It appears that this writ petition was listed 'for admission' first time on 09.09.2016. On that day, one Mr.S.Chandrasekar, learned Government Advocate, took notice for the respondents and it was adjourned for four weeks for filing counter. Thereafter, this case was not listed till 03.07.2023. On 17.07.2023, on behalf of Respondents No.2 and 3, a counter affidavit has been filed along with typed set of papers.

4. The facts of the case are that the petitioner was appointed as Vaccinator (under National Small Pox Eradication Programme) on 27.03.1963 and thereafter, he was promoted as Health Inspector at District Health Office, Salem on 20th April, 1970. In the cadre of Health Inspector, he was given Selection Grade and Special Grade on 20th April, 1980 and 20th April, 1990 respectively. On account of Selection Grade and Special Grade, his scale of pay was fixed at Rs.5900-200-9900. Subsequently, he was



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promoted as Block Health Supervisor on 12.09.1996, but his scale of pay even in the promoted category remained as Rs.5900-200-9900, in view of the fact that he was given more pay in the post of Health Inspector on account of the Selection Grade and Special Grade than the pay applicable to the post of Block Health Supervisor. The petitioner retired from service on attaining the age of superannuation on 31st January, 2001. When the petitioner went to the office of the Respondent No.4, to receive Medical Insurance Card, he was informed by the Respondent No.4 that his pension amount would be decreased and to that effect, an order will be communicated. But no such order was communicated to the petitioner. However, in the month of June, 2016, the petitioner's pension amount was decreased without any information. The petitioner sent a representation to the Respondent No.5 on 11.07.2016 requesting him not to decrease his pension, that too, without any order from the Respondent No.3 and without issuing any notice. But subsequently, in respect of July month also, his pension amount was decreased. Under those circumstances, he filed an application under Right to Information Act, seeking for any reason to deduct the pension amount of the petitioner. In response thereto, the Respondent



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No.5, *vide* his proceedings, has informed the petitioner that the petitioner is being given wrong pension and the petitioner did not produce any documents, the amount of pension was decreased and recovery of the petitioner's Dearness Allowance at the rate of 125% was ordered. Aggrieved with the action of the respondents in decreasing the pension amount and ordering for recovery, the petitioner is constrained to file this writ petition.

5. In fact, filing of counter affidavit by Respondents No.2 and 3 on 17.07.2023 is against the Madras High Court Writ Rules. As per Rule 24(2), from the date of receipt of notice, the respondents have to file counter affidavit within 8 weeks. But in the present case, the respondents filed counter affidavit nearly after seven years, which is not permissible under the relevant Rules. Moreover, the respondents did not file any application seeking permission of the Court to file counter affidavit beyond the time stipulated in the Rules. On that ground, in fact, this Court intends to reject the counter affidavit. However, considering the facts and circumstances of the case and for proper adjudication of the present case, the counter affidavit



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filed by Respondents No.2 and 3, after seven years of receipt of the notice in writ petition, is taken into account to do substantial justice in this matter.

6. In the counter affidavit, it is averred that according to G.O.Ms.No.235, dated 01.06.2009, the revised pensionary benefit was granted with notional with effect from 01.01.2006 and monetary benefit from 01.01.2007. In pursuance thereof, G.O.Ms.No.287, Finance (Pay Cell) Department, dated 22.07.2013, the revision of scale of pay shall take notional effect from 01.01.2006. For the purpose of fixation of pay in the revised scale of pay with monetary benefit from 01.04.2013, the petitioner made request for such revision and the same was revised and pension was also paid to the petitioner on the scale of pay of Rs.15600-39100-5400 by the proceedings of the Respondent No.3, dated 05.03.2014. It is also averred that the revision was made in the case of the petitioner erroneously without taking note of the Letter No.63305/Pay Cell/2010-1, dated 08.11.2010 issued by the Government. It is contended that according to the letter dated 08.11.2010, the petitioner will not at all come within the zone of consideration as such, he has got the benefit without any basis.



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7. The learned counsel for the petitioner would submit that for the deduction of the pension and for the consequential recovery, the petitioner was not issued with any order with reasons as to why his pension amount to be decreased, nor was there any notice issued in regard to revision of pension. The learned counsel contends that when Respondents No.4 and 5 decided to revise the pension of the petitioner, it is incumbent on their part to pass an order to that effect and communicate the same to the petitioner. He vehemently contends that when the order is communicated to the petitioner only, it will be given effect. But reducing the pension, without passing any order to reduce the pension, is quite illegal and in fact, unknown to the service jurisprudence. Accordingly, the learned counsel contends that the very reduction of the pension of the petitioner is highly arbitrary and thus, violation of Articles 14 and 16 of the Constitution of India.

8. The learned Special Government Pleader appearing for the respondents submits that as per the letter dated 08.11.2010, the scale of pay of employees on Selection Grade/Special Grade should be restricted to the



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level of first level and second level promotion posts only. The revised pension was paid to the petitioner erroneously without taking note of the letter dated 08.11.2010 of the Government and as such, he contends that the petitioner would not be eligible for the revision pension as per G.O.Ms.No. 287, dated 22.07.2013 and sought to dismiss the writ petition.

9. This Court gave anxious consideration to the submissions made by the respective counsels.

10. On careful perusal of the entire materials available on record, in the opinion of this Court, the only issue to be considered herein is whether the action of the respondents in reducing the pension of the petitioner and ordering for recovery without issuing notice or passing an order and communicating the same to the petitioner is sustainable under law or not.

11. As per the facts of the case, there is no dispute with regard to the appointment of the petitioner as Vaccinator on 27.03.1963 and his



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promotion as Health Inspector on 20th April, 1970 and he was awarded Selection Grade and Special Grade in the post of Health Inspector on 20th April, 1980 and 20th April, 1990 respectively. There is also no dispute that the petitioner was promoted as Block Health Supervisor on 12.09.1996 and he was retired from service on attaining the age of superannuation on 31st January, 2001. It is also an admitted fact that the Respondent No.3 issued proceedings on 05.03.2014 revising the pension, which was also paid to the petitioner on the scale of pay of 15600-39100-5400.

12. Whether the Respondent No.3 took note of the letter of the Government dated 08.11.2010 or not may not be in the knowledge of the petitioner. It appears that there is no fault on the part of the petitioner, if any mistake committed by the Respondent No.3.

13. As per the contention of the learned counsel for the petitioner, before refusing the pension and for taking steps for recovery, the respondents did not pass any order and no notice was issued to the petitioner. Though in the counter affidavit, several averments are made by



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Respondents No.2 and 3, there is no whisper with regard to the issuance of notice by the respondents to the petitioner before taking such decision for reducing the pension and for recovery. There is no mention in the counter affidavit whether any show cause notice was issued to the petitioner calling for his explanation and asking for production of any records before taking decision for reducing the pension and ordering for recovery from the pension amount of the petitioner.

14. It is settled law that without issuing any notice to the aggrieved party and passing an order, is in violation of principles of natural justice. In the considered opinion of this Court, if any order is passed by any authority, unless it is communicated to the concerned person, who will be affected, it cannot be treated as an order.

15. Admittedly, in the present case, no notice was issued to the petitioner before reducing his pension or for recovery and no order was communicated to the petitioner informing the reduction of the pension and recovery of any amount from his pension. Under these circumstances, this



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Court has no hesitation to hold that the action of the respondents in reducing the pension of the petitioner and ordering recovery from the pension amount of the petitioner is illegal, arbitrary, unjust and in violation of the principles of natural justice.

16. Accordingly, this writ petition is allowed with the following directions:

- i. The respondents are directed to pay pension to the petitioner as per the proceedings of the Respondent No.3 dated 05.03.2014;
- ii. If any amount is deducted from the pension of the petitioner, it shall be credited to his pension account within a period of four weeks from the date of receipt of a copy of this order;
- iii. There shall be no order as to costs; and
- iv. Connected miscellaneous petition is closed.

26.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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BATTU DEVANAND, J.

abr

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Finance Department,
Secretariat, Chennai.
2. The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Chennai.
3. The Deputy Director of Health Services,
O/o. The Deputy Director of Health Services Office,
Sakarankovil, Thirunelveli District.
4. The Treasury Officer,
O/o. The Treasury Office,
Vilavankodu at Kulithurai,
Kanyakumari District.
5. The Assistant Treasury Officer/
Public Information Officer,
O/o. The Treasury Office,
Vilavankodu at Kulithurai,
Kanyakumari District.

Pre-delivery Order made in
W.P.(MD) No.17154 of 2016

26.07.2023