BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.22952 of 2021

P.Selvaraj ... Petitioner

Vs.

1.The Accountant General (A & E),
No.361, Anna Salai,
Chennai – 600 018.

2.The Principal District Judge,
Srivilliputhur,
Virudhunagar District. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in No.AG (A&E)/PEN PO2/10226111/1/R0225755/282, dated 21.10.2020, quash the same in so far as deducting the petitioners pension from the increment granted as per G.O.Ms.No. 1011 is concerned, and direct the 1st respondent to disburse the pensionary benefits to the petitioner as per the proposal sent by the 2nd respondent dated 29.10.2019.

For Petitioner : Mr.R.V.Rajkumar

For Respondents : No appearance for R1

ORDER

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

The Writ on hand has been instituted, questioning the validity of the order passed by the Accountant General of Tamil Nadu in proceedings dated 21.10.2020.

2. The petitioner was holding the post of Assistant and thereafter, promoted to the post of Head Clerk. Finally, he was promoted to the post of Sheristadar and posted at Sub Court, Virudhunagar. The petitioner voluntarily retired from service on 29.10.2019 by rendering 23 years of service. Special Increment was granted to the writ petitioner based on the Government Order issued in G.O.Ms.No.1011, Home (Courts-V) Department, dated 07.12.2010. The said Government Order was passed pursuant to the recommendations of Justice Shetty Commission and relying on the said Government Order, the petitioner claimed special increment. However, the Office of the Accountant General of Tamilnadu raised an objection stating that the petitioner is not eligible for special increment since he was promoted from one upgraded post to another upgraded post and not falling under the eligibility criteria fixed in the said order issued in

G.O.Ms.No.1011, dated 07.12.2010, and consequently, a recovery order was issued. Thus, the petitioner is before us.

3. Learned counsel for the petitioner mainly contended that he has not misrepresented nor given any undertaking before the competent authorities. He is eligible to draw special increment based on the Government Order and therefore, the recovery imposed is untenable. More so, the petitioner was allowed to retire from service on 29.10.2019 and the impugned order has been passed after the date of his retirement on 21.10.2020. The petitioner being a pensioner, any recovery would be of great hardship.

4. We have considered the issues. The authorities competent are empowered to correct any error occurred while fixing or refixing the scale of pay. In the present case, the eligibility of the petitioner to draw special increment based on G.O.Ms.No.1011, dated 07.12.2010, is disputed and objected by the Accountant General of Tamil Nadu. However, the recovery imposed deserves to be considered. Even in the case of error in fixation of pay or pension, such errors alone should be corrected by the competent authorities, but, recovery, if imposed against a retired employee, the same would result in hardships. The principles in

this regard are settled by the Courts. Recovery of excess pay paid to a pensioner cannot be recovered and in the present case, the impugned order has been passed after allowing the petitioner to retire from service in the year 2019.

5. In view of the facts and circumstances, the impugned order passed by the first respondent in proceedings in No.AG (A&E)/PEN PO2/10226111/1/ R0225755 /282, dated 21.10.2020, is quashed with reference to recovery alone. Regarding re-fixation of pay and pension, the respondents are directed to correct the mistake, if any occurred, and fix the correct pay as applicable to the petitioner based on the Government Orders and the Rules in force. Amount of recovery, if any, made pursuant to the impugned order is directed to be reimbursed to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. On account of re-fixation, if any difference arose, the said differences are also to be settled to the petitioner.

6. With the above directions, the Writ Petition is allowed in part. No costs.

(S.M.S., J.) & (V.L.N., J.)
05.12.2023

NCC : Yes / No
Index : Yes / No
SJ

To

1.The Accountant General (A & E),
No.361, Anna Salai,
Chennai – 600 018.

2.The Principal District Judge,
Srivilliputhur,
Virudhunagar District.

S.M.SUBRAMANIAM, J.

AND

V.LAKSHMINARAYANAN, J.

SJ

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