IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2024

Coram:

THE HONOURABLE MR. JUSTICE G.ARULMURUGAN

W.P.No.12494 of 2015

J.Balasubramanian … Petitioner

Vs.

1. The Director of Local Fund Audit
   Kuralagam, IVth Floor,
   Chennai – 600 108

2. The Zonal Officer-I
   Corporation of Chennai
   Chennai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India seeking to issue a writ of certiorarified Mandamus calling for the records relating to the orders passed by the 1st respondent dated 28.10.2013 in Mu.Mu.No.20827/நஒச1/2013, order dated 20.01.2014 passed in Mu.Mu.No.எ4/0012/2014 and order passed by 2nd respondent in ம.அ.1 ந.க.No.அ1/300/2012 dated 25.02.2014 and order dated 06.06.2014 in Ni.Mu.No.7486/நஒச1/2014, dated 06.06.2014 and quash the same and consequently direct the 1st respondent to repay a sum of Rs.2,09,947/- attached from DCRG along with 12% interest compoundable annually and revise the pension based on the last drawn scale of pay, the difference of pensionary amount along with interest within a date fixed by this Court.

For Petitioner : Mr.N.Palani Kumar
for Mr.P.Kannana Kumar
For Respondents : Mr.Stalin Abhimanyu, AGP for R1
Mr.D.B.R.Prabhu, Standing Counsel for R2

ORDER

This Writ Petition is filed seeking a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 1st respondent dated 28.10.2013 in Mu.Mu.No.20827/நஓச1/2013, order dated 20.01.2014 passed in Mu.Mu.No.எ4/0012/2014 and order passed by 2nd respondent in ம.அ.1 ந.க.No.அ1/300/2012 dated 25.02.2014 and order dated 06.06.2014 in Ni.Mu.No.7486/நஓச1/2014, dated 06.06.2014, quash the same and consequently, direct the 1st respondent to repay a sum of Rs.2,09,947/- attached from DCRG along with 12% interest compoundable annually and revise the pension based on the last drawn scale of pay and also the difference of pensionary amount along with interest within a date that may be fixed by this Court.

2. It is the case of the petitioner that he worked as a Municipal Engineer in the Kathivakkam Minicipality and retired on 31.01.2011 and that he has put in 34 years of service. Just prior to his retirement, the 2nd respondent initiated departmental proceedings and since the said proceedings were not finalized, the 1st respondent sanctioned only provisional pension based on the last basic scale of pay drawn. Pursuant to passing of the final order in the departmental proceedings, the 1st respondent sent a letter dated 28.10.2013 to the 2nd respondent, raising some queries relating to his service from 30.09.1982 till retirement and informed that there had been some mistakes in the Service Register relating to fixation of scale of pay. On receipt of the said letter, the 2nd respondent passed an order dated 25.02.2014, mentioning that there had been audit objections relating to the service of the petitioner and mechanically revised the scale of pay from 31.05.1988 to 31.01.2011 and passed the impugned orders reducing the scale of pay from Rs.26,880/- to Rs.26,320/- and thereby, the pensionary benefits were reduced. In pursuance of the said unilateral revision of the scale of pay alleged to have been fixed wrongly, consequential order was passed by the 1st respondent

fixing the basic scale of pay at Rs.25,720/- and ordered to recover a sum of Rs.2,09,947/- from the pensionary benefits of Rs.6,40,811/-. As this had been done pursuant to the audit objections, the petitioner has challenged the impugned orders in the present writ petition.

3. The learned counsel appearing for the petitioner contended that the petitioner has already retired from service. The respondents are not justified in revising the pay scale after his retirement. Further, the respondents ordered recovery of amount alleged to have been paid in excess, without even affording any opportunity of hearing to the petitioner, by issuing any show cause notice. It is his further contention that once the petitioner retired from the service, the respondents cannot recover any amount alleged to have been paid in excess, for no fault on the part of the petitioner. In this context, the petitioner had relied on the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others reported in (2015) 4 SCC 334*** and ***Jagadish Prasad Singh Vs. State of Bihar and Others in Civil Appeal No.1635 of 2013 dated 08.08.2024*** and sought inference of this Court.

4. The learned Additional Government Pleader appearing for the 1st respondent contended that since the pay scale was wrongly fixed, the

anomaly was sought to be rectified. In the audit objection, it was found that wrong fixation had been made as early as 1988 onwards and after the calculations were worked out, it was found that a sum of Rs.26,870/- was paid in excess and therefore, the impugned proceedings came to be passed, whereby, a sum of Rs.2,09,947/- was sought to be recovered from the gratuity amount of the petitioner.

5. Heard the submissions of the respective learned counsel and perused the materials available on record.

6. The petitioner who had worked in the Municipality Department, had retired from service as early as 31.01.2011. When the retirement benefits of the petitioner were sought to be settled, queries were raised by the local fund audit vide letter dated 28.10.2013 mentioning that there has been wrong fixation of scale of pay for more than 25 years, for which, recovery was sought to be raised. Pursuant to the above, the 2nd respondent, implemented the audit objections and ordered recovery of Rs.2,09,947/- from the pensionery benefits of the petitioner.

7. From a perusal of the impugned orders, it could be seen that the revision of pay scale from the year 1988 onwards, which can have adverse effect throughout his service benefits, has been made without issuance of

any notice and affording an opportunity of hearing to the petitioner, which is in violation of the principles of natural justice. When the respondents seek to revise the pay scale, detrimental to the interest of the petitioner, necessarily the respondents ought to have issued show cause notice calling upon the petitioner to put fourth his objections if any and without affording any such opportunity of hearing to the petitioner, the action initiated by the respondents suo motu revising the pay scale, based on the audit objections, is unsustainable.

8. Further, it is settled proposition of law based on the decision of the Hon 'ble Supreme Court, in ***Rafiq Masih (White Washer)*** case referred to above, that when once an employee is retired from service, the amount that was alleged to have been paid in excess cannot be recovered from the concerned employee and further also in respect of the period which is beyond five years from the date of order of recovery.

9. In the instant case, it could be seen that the amount was paid in excess due to wrong fixation/calculation made by the respondents. If at all any payment has been made in excess not due to the fault of the petitioner and when the pay scale is sought to be revised, the same is hit by the decision of the Hon'ble Supreme Court referred to above in the ***White***

Washer case. For ready reference**,** paragraph 18 of the said decision is extracted as below:

> *"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments h ave 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).*
>
> *(ii) Rec*overy from the retired employees, or the employees, who are due to retire within one year, of the order of recovery, is impermissible.
>
> *(iii) Recovery from the 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."*

10. As per Clause 18(ii) of the aforesaid decision, recovery from the retired employees or the employees, who are due to retire within a period of one year of the order of recovery, is impermissible and as per Clause 18 (iii), recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued, cannot be sustained.

11. In the instant case, since the recovery which is sought to be made through the impugned orders are admittedly after the retirement of the petitioner from service and it also related to the period beyond 5 years from the date of recovery, the recovery is impermissible in view of Clauses (ii) and (iii) of paragraph No.18 of the above judgment of the Hon'ble Supreme Court. Further, in the case on hand, impugned proceedings were issued to recover the amount alleged to have been paid in excess for no fault on the part of the petitioner, without affording any opportunity of hearing to the petitioner, which is, in violation of the principles of natural justice.

12. For all the above reasons, the impugned orders passed by the respondents, are not sustainable.

13. In view of the above observations, this Writ Petition is allowed. The impugned orders passed by the respondents are set aside. Consequently, the 1st respondent is directed to refund the amount of Rs.2,09,947/- to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

14. There shall be no order as to costs.

13.09.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Case Citation : Yes/No

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To

1. The Director of Local Fund Audit
Kuralagam, IVth Floor,
Chennai – 600 108

2. The Zonal Officer-I
Corporation of Chennai

Chennai.

G.ARULMURUGAN. J.

Ksa-2

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