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W.P.No.1251 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

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THE HON'BLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.1251 of 2022

and

W.M.P.Nos.1354, 1355, 20603 and 32348 of 2022

M.Paramasivam

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Municipal Administration Department,
Fort St.George, Chennai – 600 009.

2.The Director of Town Panchayat,
MRC Nagar, Raja Annamalai Puram,
Chennai – 600 028.

3.The Commissioner,
Commissionerate of Treasuries and Accounts,
Integrated Complex for Finance Department,
3rd Floor, Veterinary Hospital Campus,
Nandanam, Chennai – 600 035.

4.The Assistant Treasury Officer,
District Sub Treasury,
Tirupur District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records of the 4th respondent in his proceeding Na.Ka.No.928/2021/A2 dated 19.08.2021 and quash the same.

For Petitioner : Mr.K.Raja

For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader

ORDER

The writ petition challenging the impugned order dated 19.08.2021 in and by which recovery for a sum of Rs.4,59,324/- was ordered from the petitioner. As per the impugned order, the petitioner was being paid pension at the rate of Rs.10,500/- p.m., with effect from 01.01.2007 and Rs.28,050/- p.m., with effect from 01.10.2017 erroneously. The pension has to be downwardly revised as Rs.9,353/- with effect from 01.01.2007 and a sum of Rs.24,040/- with effect from 01.10.2017 and therefore the excess is sought to be recovered.

2. Mr.K.Raja, learned counsel appearing on behalf of the petitioner would submit that by an order dated 27.11.2017 the Principal Accountant



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General (A&E), had only directed fixation of pension as per G.O.Ms.No.235.

Thereafter, an order is passed by the Assistant Director of Town Panchayat on 30.01.2018. In fact, after due application of mind, the following order was passed by the Assistant Director of Town Panchayat which reads as under:-

“In the above stated circumstances, the pension of Thiru.M.Paramasivam is revised and sanction is accorded re-fixing his pension at Rs.10,500/- which is being the minimum as ordered in para 2(vi) of G.O.(Ms)No.235 Finance(PC) Department dated 01.06.2009 notionally w.e.f 01.01.2006 in the post of Asst.Director of Town Panchayats and the monetary benefits shall take effect from 01.01.2007.”

3. Similarly, once again the Assistant Director of Town Panchayat has written back to the Assistant Treasury Officer on 30.01.2018 stating that the pension has been correctly fixed and requesting him to drop the proposal. In that view of the matter, there was no justification to downwardly revised the pension of the petitioner.

4. Secondly, he would submit that impugned order was passed allegedly based on some directions from the Assistant Director of Town Panchayat dated 23.07.2018. A copy of the said letter is also not served on the petitioner. In any event, in respect of the pension which is being paid



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from the year 2007 onwards, now, recovery cannot be resorted to.

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5. Per contra, Mr.Stalin Abimanyu, learned Additional Government Pleader appearing on behalf of the respondents relying upon the counter affidavit would submit that when excess amount has been paid to the petitioner, mistake is to be corrected. The pension which is fixed to the petitioner was excessive and therefore has rightly been corrected by the impugned order. The audit objections were raised and accordingly the petitioner's pension has been revised.

6. As a matter of fact, the petitioner has given a letter dated 13.09.2021 specifically undertaking to repay the excess payment of Rs.4,59,324/- in 76 monthly installments. After giving such a letter and accepting the entire revision of pension and order of recovery, it will not be now open for the petitioner to contest the same by filing the present writ petition.

7. The learned Additional Government Pleader for the respondents would also rely upon the judgment of the Division Bench of this Court in W.A.No.1373 of 2017 dated 09.11.2017, where under, it is stated that once a



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employee gives consent for recovery he cannot contest the same.

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8. I have considered the rival submissions on merits and perused the materials available on record.

9. At the outset, I find that the impugned order is passed based on a communication of the Assistant Director of Town Panchayat, Coimbatore, dated 23.07.2018. There seems to be audit objections in respect of payment of pension. Once, the respondents are of the opinion that the petitioner has been paid higher pension than to the sum which he is entitled to, then it is for the respondents to forward the concerned audit objections and also propose to revise the pension by giving reasons and by giving an opportunity to the petitioner. In the absence of such an opportunity, the impugned order cannot be sustained.

10. In view thereof, this Writ Petition is allowed on the following terms:-

1.The impugned order dated 19.08.2021 stands quashed.

2.However, the respondents will be at liberty to initiate proceedings



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afresh by issuing a Show Cause Notice by duly supplying the letter dated 23.07.2018, and also the audit objections and to call for objections from the petitioner and after giving due opportunity and thereafter to decide the matter afresh. In such an event, all contentions of the petitioner are kept open, apart from merits, the petitioner can also raise his contentions that recovery cannot be made at a belated point of time.

3. No costs. Consequently, connected writ miscellaneous petitions are closed.

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Index : Yes
Speaking Order: Yes
Neutral Citation : No

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