IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.21650 of 2012
and M.P.No.2 of 2012

A.Kamal Sahib ... Petitioner

versus

1.The Director,
Local Fund Audit,
Kuralagam, IV Floor,
Chennai - 600 108.

2.The Assistant Director,
Directorate of Local Fund Audit,
Kuralagam,
Chennai - 600 108.

3.The Commissioner,
Thiruthani Municipality,
Thiruthani,
Thiruvallur District.

4.The Executive Officer,
Thiruthani Municipality,
Thiruthani, Thiruvallur District. ... Respondents

Prayer: Writ 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 orders of the first respondent made in

Mi.Mu.No.32286/naosa(1)/2007 dated 18.10.2007, fourth respondent in Na.Ka.No.231/07 dated 14.12.2007 and second respondent in No.61764/MPV1/07, dated 14.11.2008 (595/08 dated 23.12.2008) and quash the same and consequently direct the respondents to refund the amount of Rs.62,584/- illegally recovered from the gratuity of the petitioner with interest at 18% per annum from the date of recovery to date of refund and direct the first respondent to fix the pay of the petitioner as per the official committee pay scale re-fixation in the year 2009 and corresponding to fix the pay of the petitioner at Rs.9,720/- instead of Rs.6,610/- and also to refund the difference in pension paid till such refixation.

For Petitioner	:	Mr.S.Silambanan Senior Counsel for M/s.Profexs Associates
For Respondent Nos.1 to 3	:	Mr.S.Rajesh Government Advocate
For Respondent No.4	:	Mr.C.Selvaraj Additional Government Pleader

O R D E R

The writ petition is filed challenging the order of the first respondent dated 18.10.2007, the order of the fourth respondent dated 14.12.2007 and the order of the second respondent dated 14.11.2008 in so far as refixing the pay scale of the petitioner and also for recovery of a sum of Rs.62,584/-.

2. According to the petitioner, he was working as a Pipeline Fitter under the fourth respondent at Thiruthani Third Grade Municipality and was appointed on 26.07.1972 in the pay scale of Rs.950-1500. Thereafter, on 26.07.1982, the petitioner was awarded selection grade by the fourth respondent and fixed the pay scale of Rs.1200-30-1560-40-2040. Subsequently, special grade was also awarded on 26.07.1992 in the pay scale of Rs.1320-30-1560-40-2040. The petitioner was also awarded super grade on 26.07.2002 and the pay scale was refixed at Rs.5,400/-. The petitioner already attained superannuation on 30.06.2007 and was drawing pension of Rs.13,610/-. Pursuant to his retirement, the impugned orders came to be passed in respect of refixation of the pay scale and also for consequential recovery.

3. The learned Senior Counsel for the petitioner contended that the impugned orders passed are illegal, particularly when arbitrary refixation of the pay scale has been made, without even issuing any notice affording an opportunity to the petitioner. The learned Senior Counsel further contended that in view of the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***, once the petitioner retired from service, the respondents cannot recover any amount alleged to have been paid in excess, for no fault on the part of the petitioner.

4. The learned Additional Government Pleader for the fourth respondent contended that since the authorities came to know that the pay scale has been wrongly fixed as Rs.1200-30-1560-40-2040 instead of Rs.1100-25-1150-30-160 as early as on 01.06.1988, the impugned orders came to be passed for refixation of the pay scale and also for consequential recovery which is perfectly in order and sought for dismissal.

5. Heard the rival submissions made by the learned counsel appearing on both sides and perused the materials available on record.

6. Admittedly, the petitioner who had worked as Pipeline Fitter under the fourth respondent Municipality was awarded with the selection grade and also special grade and he attained superannuation on 30.06.2007. The petitioner had put in nearly 34 years and 11 months of service and pursuant to his superannuation, he has also been awarded pension from 01.07.2007.

7. At this juncture, based on the impugned order of the first respondent dated 18.10.2007 stating that the pay scale of the petitioner has been wrongly fixed as on 01.06.1988 in the pay scale of Rs.1200-30-1560-40-2040 instead of Rs.1100-25-1150-30-160, the fourth respondent had passed a consequential order dated 14.12.2007 to implement the orders of other authorities whereby the pay scale wrongly fixed for the period from 01.06.1988 to 30.06.2007 and calculated a sum of Rs.60,784/- sought to be recovered.

8. It is relevant to point out that even if there has been any wrong fixation, the respondents are entitled to fix the pay accordingly, but the pay fixation cannot be altered disadvantageous to the position of the petitioner, without issuing any notice affording an opportunity to the petitioner. Also in view of the settled decision in ***White Washer's*** case stated *supra*, any order of recovery from the employees who had retired from service and also where the recovery is for a period beyond 5 years, is impermissible. The relevant portion of the said judgment is extracted hereunder:-

> *"**18**. It is not possible to postulate all situations of hardship which would govern employees on the issue 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).*

(ii) *Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*

(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."*

9. 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. Further, it is seen from the records that the pay fixation has been made only as per the calculation made on the part of the respondents and there was no mistake or error on the part of the petitioner in so far as the fixation of pay to him.

10. 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 relates to a period beyond 5 years before the date of recovery, the recovery is impermissible in view of Clauses (ii) and (iii) of paragraph 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.

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

12. If the recovery has been effected, the respondents are directed to reimburse the recovery made under the impugned orders to the petitioner within a period of eight weeks from the date of receipt of a copy of this order along with interest @ 6% per annum. The respondents are at liberty to issue necessary notice to the petitioner in respect of correction and refixation of pay scale after affording an opportunity to the petitioner and thereafter take a decision, on merits and in accordance with law.

13. In view of the above observations and directions, this Writ Petition stands ***allowed*** and the impugned orders dated 18.10.2007, 14.12.2007 and 14.11.2008 passed by the respondents are set aside. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

21.10.2024

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

sri

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G.ARUL MURUGAN, J.

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