IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.26108 of 2015
&
M.P.No. 1 of 2015

D.Kumar ...Petitioner

Vs.

1.The Commissioner of Milk Production &
Dairy Development,
Madhavaram Milk Colony,
Chennai – 600 051.

2.The Managing Director,
Tamilnadu Co-operative Milk
Producer's Federation Limited,
Madhavaram Milk Colony,
Chennai – 600 051. ...Respondents

Prayer: Writ Petition is filed under Article 226 to issue a Writ of Certiorari, to call for the records of the 2nd respondent bearing Ref.No.4740/Pers.Estt.1/2004 dated 16.06.2015 and quash the same.

For Petitioner : Mr. K.S.Viswanathan
Senior Counsel
for Ms. T.Hemalatha

For Respondent1 : Mr. V.Jeevagiridharan
Additional Government Pleader

For Respondent 2 : Mr. R.Balaramesh.

ORDER

The petitioner seeks to quash the order passed by the 2nd respondent in his proceedings dated 16.06.2015 bearing Ref. No.4740/Pers.Estt.1/2004. The impugned order of the 2nd respondent seeks to recover the amounts that have been paid in excess to the petitioner based on audit objections. It would be necessary to allude to the facts for appreciating the grievances of the petitioner herein.

2. The petitioner was appointed initially as a Junior Engineer (Diary Engineering) in the Tamil Nadu Diary Development Corporation Limited, herein after referred to as TNDDC. On 01.02.1981, the TNDDC was converted as the Tamil Nadu Cooperative Milk Producers' Federation, which would herein after referred to as

TCMPF.

3. The petitioner was promoted as a Deputy Manager (Engineering) on 17.08.1980, in which capacity he had worked for about 8 years. Thereafter, on 22.09.1988 he was posted as a Manager-in-charge (Production) against a regular vacancy. Further, he continued to receive the scale pay of the Deputy Manager (Engineering). Thereafter, the post of Manager (Production) was re-designated as Deputy General Manager.

4. The 2nd respondent vide his proceedings dated 12.05.1995 had regularised the service of the petitioner retrospectively in the cadre of Manager drawing pay scale of Rs.3700 – 125 – 4700 – 150 – 5000 and the arrears of salary with effect from 22.09.1988 was also granted to the petitioner. However, while granting the same, an undertaking was also taken from the petitioner and the similarly placed persons that the arrears of salary paid would be subject to recovery in the event of audit objections for the same.

5. Nearly 16 years after the arrears of salary were paid to the petitioner on the basis of a special audit report, the 2nd respondent had passed an order dated 06.04.2004 directing recovery of the arrears of salary paid for the period from 1988 to 1995 i.e., for the period when the petitioner was posted as a Manager-in-charge (Production) till the date his services has been regularied by the 2nd respondent.

6. The petitioner had immediately challenged the recovery proceedings by filing W.P.No.16750 of 2004 and thereafter by order dated 29.08.2008 this Court directed that the recovery be treated as show cause notice and final order be passed by the respondents after giving opportunity to the petitioner. Meanwhile on 31.10.2006, the petitioner had retired from service and his terminal benefits were also settled on him.

7. In compliance of the above order dated 29.08.2008, the petitioner had submitted his reply to the 2nd respondent. However, by an order dated 04.07.2009, the 2nd respondent confirmed the order of recovery from the petitioner. Against the said order, the petitioner had filed a revision before the 1st respondent. Since orders were not passed by the revisional authority, the petitioner has once again knocked the doors of this Court seeking an early disposal of the revision which is also granted by this Court by an order dated 09.02.2011, wherein this Court had directed the 1st respondent to dispose of the revision within a period of 4 weeks from the date of receipt of a copy of the order.

8. When the petitioner had approached the 1st respondent for the disposal of his revision, the 1st respondent had directed the petitioner to approach the Appellate Authority, namely, the Special Officer of TCMPF and further issued directions to the Special Officer / Board to dispose of an appeal within a period of 3 weeks. Therefore, the petitioner had preferred an appeal on 19.04.2012 before the Special Officer and after several reminders for an early disposal of the appeal

and getting no response to these representation which spans a period form 28.05.2012 to 01.12.2014, the petitioner once again filed W.P.No.13730 of 2015, challenging the original order dated 04.07.2000. The said Writ Petition has been admitted and kept pending.

9. Meanwhile the 2nd respondent has proceeded to pass the impugned order dated 16.06.2015 directing to remit arrears amount as directed in the earlier order dated 04.07.2009. A perusal of the impugned order clearly denotes the non-application of mind on the part of the 2nd respondent, the petitioner's objection has not even been taken into consideration. It is stated that the matter had been examined by the AR(A)C dated 17.12.2014 and the AR(A)C had directed action to be initiated as per the statutory arbitration under Section 90 of the TNSC Act, 1983, in respect of the individuals who were already drawn the terminal benefits. By virtue of the impugned order, the petitioner was also directed to remit the amount within a period of 30 days from the date of receipt of the order.

10. Challenging this order, the petitioner has filed the instant Writ Petition and obtained orders of stay.

11. Mr. K.S.Viswanathan, learned senior counsel appearing on behalf of the learned counsel for the petitioner would submit that the petitioner was posted as a Manager-in-charge (Production). He had fully qualified to hold the said post which is the next promotion post as per the rules of the respondent federation. The Rules prescribed that the persons who are working in the respondent federation for 5 years in a lower cadre becomes eligible for promotion to the next higher level post. Therefore, the petitioner had been put in charge only against the regular vacancy.

12. The learned senior counsel would also rely upon an earlier proceedings of the Finance Department dated 05.08.1985, wherein, clarification had been issued to the effect that where a higher post is filled up by lower level officer, the lower level officer should be paid

higher pay admissible to the higher post. The petitioner and the similarly placed persons have been similarly posted into the next higher level and therefore there is no ambiguity in the payment of the arrears and regularisation. The respondents have not considered the objections made by the petitioner before passing the impugned order.

13. The learned senior counsel would also rely upon the Judgement of the Hon'ble Supreme Court reported in ***2015 (4) SCC 334 – State of Punjab and others Vs. Rafiq Masih (White Washer),*** with particular reference to Paragraph No.18. He would also submit that they could also not be de-promoted back to the earlier post since that post had also been filled up.

14. The learned senior counsel would also submit that the regularisation of the petitioner and the similarly placed persons has not been a hasty decision but a decision which had commenced with the Personnel Committee meeting held on 08.05.1995, who after analysing the various aspects had recommended for regularisation. This minutes

were issued on 12.05.1995 and the regularisation order was also issued on the very same day.

15. Ultimately, the board which is the final authority in its meeting dated 22.06.1995 had ratified the action taken by the Personnel Committee and minutes to this effect had been issued on 10.07.1995 after which the regularisation order were issued to the parties concerned. Therefore, the audit objection is erroneous.

16. The respondent has filed a counter statement which primarily proceeds on the ground that the petitioner has himself given an undertaking that in the event of the audit objections, the arrears paid could be recovered. They would also seek to distinguish the Judgement cited on by the petitioner by relying upon the Judgement reported in ***2016 (14) SCC 267 – High Court of Punjab and Haryana and others Vs. Jagdev Singh***.

17. Heard the learned counsels and perused the records.

18. It is not the case of the respondents that the petitioner has been put in-charge of the post which is not his next higher post. It is also not in dispute that till the regulatisation, when the petitioner served as a Manager-in-charge he had been paid the scale of pay applicable to the Deputy Manager (Engineering), which is the lower level post.

19. The records would further show that by the order dated 12.05.1995, the petitioner had not been promoted but his service in the post of Manager-in-charge had been regularised with effect from 22.09.1988 and the scale of pay in the cadre of Manager was also directed to be paid with retrospective effect. The audit objections however ignored the orders passed by the Personnel Committee in its meeting dated 08.05.1995 which has been ratified and approved by the board. Therefore, no anamoly is found in the appointment of the petitioner.

20. Further, the petitioner had superannuated nearly 9 years ago,

at the time of filing of the Writ Petition. Therefore, the Judgement of the Hon'ble Supreme Court reported in ***2015 (4) SCC 334 – State of Punjab and others Vs. Rafiq Masih (White Washer) and others***, would clearly apply to this case. The Hon'ble Supreme Court in paragraph no.18 has stated as follows:

> *"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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

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

(iii) Recovery from 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."

21. Therefore, as per clause 18 (2) & 18 (4) supra, the recovery initiated against the petitioner is impermissible and consequently the Writ Petition is allowed and the impugned order is quashed. Consequently, the connected Miscellaneous Petition is closed. No costs.

13.06.2024

Index : Yes/No
Internet : Yes/No
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P.T. ASHA, J,

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