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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.09.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.5958 of 2023
and WMP No.5962 of 2023

M.Suresh Kumar

... Petitioner

Vs.

1. The Director,
Directorate of Ex-service Men's Welfare
No.22, Raja Muthaiah Salai,
Chennai 600 003

2. The Additional Director,
Directorate of Ex-Service Mens Welfare,
No.22, Raja Muthaiah Salai,
Chennai 600 003.

3. The Joint Director,
Director of Ex-Service Men's Welfare,
No.22, Raja Muthiah Salai,
Chennai 600 003

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order of the 1st respondent in her proceedings bearing



No.15459/No.3/1 dated 13.01.2023 and quash the same and pass any such further or other orders.

For Petitioner : Mrs.D.Kamatchi

For Respondents : Mr.P.Balathandayutham
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings of the 1st respondent dated 13.01.2023 wherein the 1st respondent has re-fixed the salary of the petitioner and has called upon the petitioner to give explanation as to why the excess salary paid to the petitioner should not be recovered.

2. Heard Mrs.D.Kamatchi, learned counsel for the petitioner and Mr.P.Balathandayutham, learned Special Government Pleader for respondents.

3. The case of the petitioner is that the petitioner is an Ex-service man. The petitioner after serving the army retired and participated in the



recruitment process to the post of Assistant Director of Ex-Service Men's Welfare conducted by the 1st respondent in the year 2011. The petitioner was appointed as Assistant Director through the proceedings of the 1st respondent dated 28.02.2011. The pay scale of the petitioner was fixed as Rs.15,600-39100 plus GP 5,400/- and other usual allowances.

4. The further case of the petitioner is that the petitioner was promoted to the post of Deputy Director and was working at Madurai.

5. The grievance of the petitioner is that the 1st respondent through the impugned proceedings dated 13.01.2023, re-fixed the salary of the petitioner and reduced the same both in the post of Assistant Director and Deputy Director and called upon the petitioner to give his explanation with regard to the proposed recovery of the excess salary paid to the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

6. The respondents have filed a counter affidavit in this case. The respondents have taken a stand that the fixation of pay in the post of Assistant



Director was not properly done and the last drawn pay of the petitioner in the defence service was taken into account and the pay was fixed. On account of the same, excess salary was paid to the petitioner without following the existing Rules in force by the then Joint Director. On coming to know of the same, the pay of the petitioner was re-fixed and the petitioner was put on notice on 13.01.2023 to show cause as to why the excess payment made to the petitioner should not be recovered. Hence, a stand has been taken in the counter that there were valid grounds for revision of pay and the petitioner was actually put on notice and therefore, the petitioner instead of giving his reply has filed the present writ petition and accordingly, the respondent has sought for dismissal of this writ petition.

7. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

8. The short issue that arises for consideration is as to whether the impugned proceedings dated 13.01.2023 can be construed to be a show cause notice or a determination has already been made and the issuance of the show



cause notice will tantamount to completion of formalities.

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9. In the case in hand, the pay was fixed in the year 2011, when the petitioner joined as Assistant Director. Thereafter, the petitioner was also promoted to the post of Deputy Director. While so in the year 2023, after nearly 12 years, the 1st respondent issued the impugned proceedings dated 13.01.2023. On carefully going through the same, it is seen that the 1st respondent has made reference to nearly twelve documents and has already come to the conclusion that the pay has not been properly fixed to the petitioner and accordingly, the pay has also been re-fixed. The notice that was sent to the petitioner is only to get an explanation from the petitioner as to why the excess pay made to the petitioner should not be recovered. This impugned proceedings dated 13.01.2023 can never be construed as a show cause notice since the 1st respondent has already decided to re-fix the salary and to proceed further with the recovery. Hence, the so called notice is only a formality completed by the authority with a predetermined mind.

10. The re-fixation of salary and the reduction of salary resulting in



recovery, has civil consequences. Therefore, the minimum that was expected of of the 1st respondent is that he should have issued a notice to the petitioner regarding the proposed revision of salary / reduction of salary and the explanation should have been called for from the petitioner. Thereafter, a decision should have been taken. If this minimum procedure has not been followed in this case, the impugned proceedings dated 13.01.2023, obviously suffers from violation of principles of natural justice. Therefore, the impugned proceedings dated 13.01.2023 is liable to be interfered on this ground alone. In the light of the same, it is not necessary for this Court to go into the merits of the case.

11. The upshot of the above discussion leads to the only conclusion that the proceedings of the 1st respondent bearing 15459/2016/No.3-1 dated 13.01.2023 is liable to be set-aside and accordingly, the same is quashed. The matter is remanded back to the file of the 1st respondent and the 1st respondent is directed to issue notice to the petitioner regarding the proposed revision / reduction of pay. The explanation of the petitioner shall be called for and it is left open to the petitioner to give the explanation and raise all the grounds.



Thereafter, the 1st respondent shall pass orders on its own merits and in accordance with law. This process shall be completed by the 1st respondent within a period of three months from the date of receipt of a copy of this order.

12. In the result, this writ petition is allowed with the above directions.

No costs. Consequently, the connected miscellaneous petition is closed.

19.09.2024

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
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N. ANAND VENKATESH, J.

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To

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