



WEB COPY

W.P.No.796



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.7960 of 2018

and

W.M.P.Nos.9913 and 9914 of 2018

Mr.B.Noor Ahmed

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Fisheries Development Corporation Limited,
No.167, Poonamalle High Road,
Eco Park, Chetpet, Kilpauk, Chennai – 600 010.
 2. The General Manager,
Tamil Nadu Fisheries Development Corporation Limited,
No.167, Poonamalle High Road, Eco Park, Chetpet,
Kilpauk, Chennai – 600 010.
 3. The Manager, Tamil Nadu Fisheries Development Corporation Limited,
Santhome High Road,
M.R.C Nagar, Chennai – 600 028.
- ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the Impugned Order Na.ka.no. 2988/PANI-I/2009 dated 06.09.2017 of the 2nd respondent and connected Impugned memorandum Na.ka.no. 2988/PANI-I/2009 dated 04.10.2017 by the 1st respondent and subsequent Impugned Memorandum Na.ka.No. 4304/NE&KA3/17 dated 15.02.2018 of the 1st respondent and consequential Impugned recovery order Na.ka.no. 781/A/2017 dated 06.03.2018 of the 3rd respondent and quash the same as illegal and consequently direct the respondents to reimburse the amount recovered from the petitioner on the basis



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of the impugned orders.

For Petitioner

: M/s.I.Abdul Basithr

For Respondents

: Mr.R.Kumaravel

ORDER

The petitioner herein was initially appointed as Junior Assistant in the respondent Corporation on 01.12.1987 and on completion of 10 years and 20 years of service in the said post, the petitioner was elevated to Selection Grade Junior Assistant on 01.12.1987 and as a Special Grade Junior Assistant with effect from 01.12.1997. Consequently, the pay of the petitioner was fixed by duly extending the benefit of selection grade and special grade through Memorandum bearing R.C.No.1731/Per-3/2011 dated 30.03.2011 and Memorandum bearing R.C.No.2988/Per-1/2009 dated 16.04.2012. While so, through impugned order bearing Na.Ka.No.2988/PANI-1/2009 dated 06.09.2017, the pay of the petitioner was revised unilaterally and an amount of Rs.1,75,174/- is sought to be recovered. Aggrieved by the same, the petitioner approached the respondents by submitting representations, but the same were not considered favourably by the respondents 1 and 2, resulting in issuance of Memorandum bearing Na.Ka.2988/PANI-1/2009 dated 04.10.2017 and Memorandum bearing Na.Ka.No.4304/KE&KA3917 dated 15.02.2018 and consequently, the recovery orders were issued in proceedings bearing Na.Ka.No.781/A/2017 dated 06.03.2018. Aggrieved by the said proceedings, the



petitioner approached this Court by filing the present Writ Petition.

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2. The main contention raised by the learned counsel for the petitioner is that the respondents having fixed the pay of the petitioner as early as in the year 2012 have issued the impugned proceedings dated 06.09.2017, without putting the petitioner on notice, reducing the pay of the petitioner and also ordered for recovery on certain amounts.

3. From the perusal of the said proceedings dated 06.09.2017, there is nothing to indicate that the petitioner was put on notice before issuing the said proceedings. It cannot be disputed that the said proceedings adversely affect the pay of the petitioner besides recovering amounts from salary of the petitioner. As contended by the learned counsel for the petitioner, the recovery was also given effect and an amount of Rs.19,084 and Rs.20,918/- were recovered during the months of February-March 2018. This Court while entertaining the Writ Petition, passed an interim order dated 05.04.2018 granting stay of the recovery.

4. The respondents filed counter-affidavit stating that the pay of the petitioner was re-fixed in terms of G.O.No.237, Finance (Pay Cell) Department dated 22.07.2013.



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5. This Court has carefully gone through the said Government order, but there is nothing in the said order to revise the pay of the petitioner. Through the said Government order, certain additional benefit was granted towards selection grade and special grade and hence, the question of revising the pay by virtue of the said Government order may not arise.

6. As seen from the entire counter-affidavit as well as the impugned order, there is no specific reason mentioned in the said proceedings as to why the pay of the petitioner is sought to be revised. Though the learned Special Government Pleader contended that in terms of Letter No.63305/Pay Cell/2010-1 dated 08.11.2010 issued by the Finance Department of the State of Tamil Nadu, the petitioner is entitled for fixation of his pay on selection grade/ Special grade at the first level and second level of promotional post, but not in terms of Annexure-I attached with the said letter dated 08.11.2010 but the petitioner was granted selection grade/ special grade in terms of Annexure-I of the said letter dated 08.11.2010 and hence, the same is sought to be revised. Further, admittedly there was no notice that was issued to the petitioner before reducing his pay and on the other hand, the respondents have strangely contended in the



counter-affidavit stating that the respondents have right to re-fix the pay of the petitioner at any time and there is no necessity of issuing any prior notice to the petitioner. The relevant paragraph of the counter-affidavit reads as under:-

“ The Government is competent to refix the pay of any Government servant at any time and if a wrong fixation was noticed later through any audit objection/ inspection defect etc., it can be set right by the Government at any point of time. There is no such condition in anywhere in Service Rules for issuance of a prior notice. There is no bar for refixation of pay, passing of recovery order for the recovery of excess pay from the Government servant/ employee and there is no restriction even if he is nearing retirement.”

7. From the above, it is evident that the impugned orders are issued in violation of the principles of natural justice. In the circumstances, the impugned orders passed by the respondents are wholly unsustainable solely on the ground of violations of the principles of natural justice. Further, during the course of hearing, it is brought to the notice of this Court by learned Government Advocate that the entire amount of Rs.1,75,174/- was already recovered from the petitioner from the retirement benefits payable to the petitioner and thereby entire recovery is already completed. This Court is unable to agree with the said submission on the part of the respondents, as already noted above, this Court by an order dated 05.04.2018 granted interim stay of recovery. The action of the respondents in recovering the amounts inspite of the interim order passed by



this Court is contemptuous.

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8. Be that as it may, as this Court is now inclined to set aside the impugned proceedings on the ground of violation of the principles of natural justice, this Court is not inclined to initiate any *suo-motu* contempt proceedings against the respondent no.1 for having violated the interim order dated 05.04.2018 passed by this Court.

9. It is also further contended by the learned counsel for the petitioner that the fixation of pay was done by the respondent on their own and there is no allegation of misrepresentation or fraud played by the petitioner in awarding the re-fixation of the pay of the petitioner, which is now sought to be reduced and therefore the respondents are not entitled to recover any amounts that too without taking into consideration the fact that the petitioner has already retired from service and also placed reliance on the decision of the Hon'ble Apex Court in the case of “*State of Punjab -vs- Rafiq Masih*” reported in (2015) 4 SCC 334. As this Court is not going into the merits of the case, it is for the petitioner to raise all such pleas before the respondent no.1 on receipt of a notice and in case if any such contentions are raised in response to such notice, the same shall be considered by the respondent no.1 while passing the orders on remand.



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10. In the light of the above, the impugned proceedings all are set aside and the matter is remitted back to the respondent no.1. Respondent no.1 is directed to issue notice to the petitioner by duly assigning the reason as to why the pay of the petitioner is sought to be revised and by duly affording an opportunity to the petitioner pass appropriate order afresh in accordance with law as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. The amounts that were already recovered pursuant to the impugned order shall be subject to the result of the orders to be passed by the 1st respondent in terms of this order.

11. Accordingly, this Writ Petition stands disposed of. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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MUMMINENI SUDHEER KUMAR, J.

skr

To

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Tamil Nadu Fisheries Development Corporation Limited,
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Eco Park, Chetpet, Kilpauk, Chennai – 600 010.
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