



WEB COPY

W.P.No.37892 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.37892 of 2015
and M.P.No.1 of 2015

S.Jegannathan,
Block No.7, (B) Wing, 4th Floor (FOF),
Jains Sudarsana Apartments,
174, Madambakkam Main Road,
Rajakeelpakkam,
Tambaram, Chennai - 600 073. ...

Petitioner

versus

1.The Secretary to Government,
Rural Development Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Local Fund Audit,
Kuralagam, Chennai.

3.The Director of Rural Development,
Panagal Building, Saidapet,
Chennai - 600 015.

4.The Commissioner,
Mohanur Panchayat Union,
Namakkal 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 relating to the impugned order of the first respondent in G.O.(D)No.421, Rural Development and Panchayat Raj (E5) Department, dated 06.08.2015 and to quash the same so far concerned the consideration of new appointment and consequently direct the respondents to grant pay protection by way of relaxing FR 22(7) on par with similarly placed person with all consequential service and monetary benefits applicable to the post of Rock Blasting Supervisor.

For Petitioner : M/s.S.T.P.Kuilmozhi

For Respondents : Mr.P.Anandakumar
Government Advocate

ORDER

This writ petition is filed challenging the order of the first respondent in G.O.(D)No.421, Rural Development and Panchayat Raj (E5) Department, dated 06.08.2015.

2. It is the case of the petitioner that he was appointed as Rock Blasting Supervisor by the District Collector, Salem and he joined in the office of the fourth respondent on 20.05.1970. His probation was declared with effect from 25.05.1972 and after continuous service of 31 years, he also retired from service on 31.08.2001. The petitioner was also awarded the



WEB COPY

selection grade, special grade and super grade. However, pursuant to his retirement on 31.08.2001, his retirement benefits were not settled and therefore, the petitioner had approached the Tamil Nadu Administrative Tribunal in O.A.No.762 of 2004 for disbursal of the retirement benefits. After the abolition of Tamil Nadu Administrative Tribunal, O.A.No.762 of 2004 got transferred to this Court in W.P.No.31863 of 2004 and was ultimately disposed of by order dated 04.04.2006 directing the respondents to pay the benefits with 18% interest.

3. Subsequently, the second respondent, by proceedings dated 30.05.2006, fixed the pension benefits of the petitioner in the category of Assistant after deducting a sum of Rs.3,37,678/- from the terminal benefits as if excess salary had been paid to him. It is the grievance of the petitioner that when he was appointed as Rock Blasting Supervisor in the year 1970 and got regularised in service in the pay scale of 9375-8000-275-13500, the respondents have arbitrarily designated the petitioner as Assistant, which is a non-technical post with the pay scale of 14800+225.



4. Aggrieved by such arbitrary fixation, the petitioner has preferred a writ petition in W.P.No.44399 of 2006, which was disposed of by this Court on 09.11.2012, directing the respondents to repay the amount deducted. However, liberty was given to the respondents to refix the salary of the petitioner in the category of Assistant and the payment of interest was negated by this Court.

5. Pursuant to the orders passed in the writ petition, the first respondent issued the impugned Government Order in G.O.(D)No.421, Rural Development and Panchayat Raj (E5) Department, dated 06.08.2015, whereby the Director of Rural Development was directed to refix the pay of the petitioner in the new post as முதல் இருக்கை பணியாளர். However, directed that the excess payment of Rs.3,37,678/- paid to the petitioner be waived off consequent to the orders passed by this Court.

6. Assailing the impugned Government Order, the petitioner has preferred the above writ petition.



7. The learned counsel for the petitioner submitted that though the petitioner had worked as Rock Blasting Supervisor and got superannuated, the order of the respondents in refixing the pay scale in the post of Assistant cannot be sustained. It is her further contention that as against the order in the writ petition dated 09.11.2012, the petitioner had preferred a writ appeal in W.A.No.162 of 2016, wherein the Hon'ble Division Bench, by order dated 18.02.2016, disposed of the appeal and liberty was granted to the respondents to refix the pay of the petitioner and the same shall be done by affording an opportunity and therefore, sought for indulgence of this Court.

8. The learned Government Advocate for the respondents contended that the impugned Government Order has been passed only pursuant to the earlier directions passed by this Court in W.P.No.44399 of 2006 dated 09.11.2012, whereby the respondents were given liberty to refix the pay of the petitioner applicable to the post of முதல் இருக்கை பணியாளர் / Assistant and therefore sought for dismissal of the writ petition.

9. Heard the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.



WEB COPY

10. The petitioner was appointed as Rock Blasting Supervisor by the District Collector, Salem, on 20.05.1970 and in which post the petitioner continued in service and got superannuated on 31.08.2001. Initially, when orders were passed on 30.05.2006 by fixing the pensionary benefits of the petitioner in the category of Assistant and also for recovering a sum of Rs.3,37,678/- from the terminal benefits, the petitioner had challenged the impugned order in W.P.No.44399 of 2006.

11. The respondents had filed a detailed counter affidavit in the above said writ petition wherein the contention of the petitioner that since the post of Rock Blasting Unit Supervisor was disbanded on 11.05.1990 and the petitioner was assigned only seat work and therefore, the first respondent had requested the Government to provide alternative employment to the petitioner due to the non-availability of the post, i.e. Rock Blasting Unit Supervisor and also sought for the pay protection to the employees who were employed in the technical post, was denied by the respondents.



12. The second respondent had passed an order dated 27.05.2006 regularising the services of the petitioner as Rock Blasting Unit Supervisor from 20.05.1970 to 11.05.1990 and as ministerial Assistant from 12.05.1990 till the date of retirement and only based on such proceedings, the excess payment of Rs.3,37,678/- was also sought to be recovered.

13. After considering the issue, this Court, by order dated 09.11.2012, interfered with the order that sought for recovery of the above sum from the petitioner as the excess salary was paid only by way of a mistake and not based on any misrepresentation made by the petitioner. However, granted liberty to the respondents to refix the pay of the petitioner, which is applicable to the post of முதல் இருக்கை பணியாளர் / Assistant. The relevant portion of the said order is extracted as under:-

“10. In view of the finding of this Court that excess salary was paid only by way of a mistake and not based on any misrepresentation made by the petitioner, as far as recovery is concerned, the petitioner is entitled for the benefit of the Judgment which has been referred to above. Consequently, that portion of the impugned order, wherein recovery is ordered, is set aside.

11. According to the learned counsel for the petitioner, that amount has been recovered from the petitioner. If this stand of the learned counsel for the petitioner is correct, the respondents are directed to



refund the amount recovered, within a period of three months from the date of receipt of a copy of this order. However, the respondents are at liberty to refix the pay of the petitioner which is applicable to the post of முதல் இருக்கை பணியாளர். As far as interest is concerned, there is no question of payment of interest.”

14. Pursuant to the order passed in the writ petition, the impugned order in G.O.(D)No.421, Rural Development and Panchayat Raj (E5) Department, dated 06.08.2015, came to be passed, wherein it has clearly stated that the Rock Blasting Unit of Mohanur Panchayat Union was closed as early as on 11.05.1990 and only due to the closure of the Rock Blasting Unit, the petitioner, who was working as a Supervisor of the Unit, was redeployed to do the clerical work. Even though the petitioner was attending the clerical work, he was drawing the pay for the post of Rock Blasting Supervisor and he had attained superannuation on 31.08.2001.

15. In view of the liberty granted by this Court in the writ petition, the respondents had refixed the pay of the petitioner in the post of Assistant / முதல் இருக்கை பணியாளர். However, the excess payment of Rs.3,37,678/-



which was refunded to the petitioner was waived in view of the orders passed in the writ petition.

16. It is the contention of the learned counsel for the petitioner that challenging the orders passed in the writ petition, the petitioner had preferred a Writ Appeal in W.A.No.162 of 2016 and by order dated 18.02.2016, the Writ Appeal came to be disposed of by directing the respondents to afford an opportunity to the petitioner. The relevant portion of the said order reads as follows:-

“5. The sole ground of the appellant's challenge is that in case of a similarly placed employee, no liberty was granted to the respondents to re-fix the pay in the post of Assistant and accordingly, his pay was also fixed in the scale of Rock Blasting Unit Supervisor. Thus, the learned Single Judge ought not to have granted liberty to the respondents to re-fix the appellant's pay in the post of Assistant.

6. According to the learned counsel for the appellant, once the appellant's pay has been fixed and the benefit of such fixation has been extended to a similarly placed employee, the learned Single Judge was in error in granting liberty to the respondents to re-fix the appellant's pay in the post of Assistant.

7. We are not in agreement with the contention of the learned counsel for the appellant. It is open to the employer to re-fix the pay if it is erroneously fixed on some other post. We are not observing anything on the merit as to whether fixation was erroneous or proper. However, since



WEB COPY

W.P.No.37892 of



liberty is granted by the learned Single Judge to the respondents to re-fix pay, if so advised, in the event, the respondents take a decision to re-examine the issue, the appellant shall be entitled to an opportunity of hearing before passing an order on re-fixation.”

17. At this juncture, it is relevant to note that after the orders were passed in the writ petition, the respondents had passed the impugned order in G.O.(D)No.421, Rural Development and Panchayat Raj (E5) Department, dated 06.08.2015 and the petitioner had preferred the present writ petition challenging the impugned order, but the petitioner had also parallelly proceeded to challenge the order passed in the previous writ petition by way of Writ Appeal.

18. In all fairness, the petitioner ought to have brought to the notice of the Hon'ble Division Bench about the order passed by the respondents impugned in this writ petition, pursuant to the earlier orders passed by the writ court and that the orders passed by the writ court had already been given effect to.



WEB COPY

19. Be that as it may, the Hon'ble Division Bench had confirmed the orders passed by the learned Judge in the writ petition and has observed that the petitioner cannot have any grievance in respect of the liberty granted by the writ court to refix the pay for the post of Assistant and has only observed that the petitioner will be entitled to an opportunity of hearing before refixation.

20. The petitioner had participated in all these proceedings and also had preferred the earlier writ petition and obtained orders in so far as setting aside the recovery of excess payment made by the respondents, which has also been refunded and further directions in the writ petition have been given effect to in the impugned orders passed, by which the refixation of pay to the petitioner in the post of Assistant has been made which was also confirmed by the Division Bench. When the respondents have also waived the payment for a sum of Rs.3,37,678/- made to the petitioner in compliance with the orders of the writ court, this Court is not able to find any error in the impugned orders passed by the respondents in refixing the pay scale as directed by this Court.



21. At this stage, the learned counsel for the petitioner submitted that even though in the impugned order, it is stated that a sum of Rs.3,37,678/- has been paid to the petitioner which has been waived off, in actual the same has not been refunded. It is needless to say that if the amount as stated in the impugned Government Order has not been refunded to the petitioner, the same shall be given effect to and refunded.

22. In view of the above observations, this Writ Petition fails and accordingly, stands ***dismissed***. Consequently, connected Miscellaneous Petition is closed.

23. There shall be no order as to costs.

18.10.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri



To
WEB COPY

- 1.The Secretary to Government,
Rural Development Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Local Fund Audit,
Kuralagam, Chennai.
- 3.The Director of Rural Development,
Panagal Building, Saidapet,
Chennai - 600 015.
- 4.The Commissioner,
Mohanur Panchayat Union,
Namakkal District.



WEB COPY

W.P.No.37892 of 2015



G.ARUL MURUGAN, J.

sri

W.P.No.37892 of 2015
and M.P.No.1 of 2015

18.10.2024