



W.P.No.7750/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.7750 of 2020
and W.M.P.No.9138 of 2020

K.Vivekanandan

...

Petitioner

/vs/

1. The Commissioner of Municipal Administration,
Chepauk,
Chennai – 600 005.

2. The Director of Local Fund Audit,
Chennai – 600 035.

3. The Assistant Commissioner /
The Assistant Commissioner (i/c),
Hasthampatti Ward Office,
Salem City Corporation,
Hasthampatti, Salem.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records on the file of the third respondent pertaining to the order in Na.Ka.No.J1/2828/2020 dated 05.05.2020 to quash the same and to issue consequential directions



W.P.No.7750/2020

to the respondents to not to reduce or recovery any pay from the petitioner
and to refund the recovered amount if any.

For Petitioner ... Mr.M.Ravi

For Respondents ... Ms.Devi.N for R1

Mr.T.Chezhiyan
Additional Govt. Pleader for R2

ORDER

The petitioner has filed this writ petition challenging the order of the third respondent passed in Na.Ka.No.J1/2828/2020 dated 05.05.2020 and to issue consequential directions to the respondents not to reduce or recover any pay from the petitioner and to refund the recovered amount if any.

2. The petitioner was initially appointed as a Line Laskar in the Salem Municipality which was subsequently upgraded as Salem Corporation. The petitioner was given with the pay scale of Rs.5200 - 20200 + grade pay Rs.1900 with effect from 01.01.2006 notionally and with monetary benefits from 01.08.2010 in accordance with G.O.Ms.No.



W.P.No.7750/2020

338 Finance (PC) Department dated 26.08.2010 and continued to be in service from the date of his appointment.

3. Mr.M.Ravi, the learned counsel for the petitioner, submitted that the third respondent has passed an order to reduce the pay of the petitioner and recovery of the same in view of the audit objection raised by the Director of Local Fund Audit; the petitioner is a Group 'D' employee and no recovery can be made. The petitioner is covered under G.O.Ms.No.286, Finance (Pension) dated 28.08.2018 and hence the order of recovery itself is liable to be set aside.

4. Mr.T.Chezhiyan, the learned Additional Government Pleader, submitted that the petitioner has retired and hence the employee-employer relationship between the petitioner and the respondent ceased to exist.

5. The petitioner's scale of pay was fixed as per G.O.Ms.No.338, Finance (PC) Department dated 26.08.2010, by giving notional effect from 01.01.2006 and allowing monetary benefit from 01.08.2010. However in



W.P.No.7750/2020

the audit objection dated 05.05.2020 reference has been made to the letter No.45529/F3/2010 of the Commissioner, Municipal Administration, Chennai, dated 21.05.2015, in respect of Line Laskar. The petitioner's pay was fixed in pursuant to the earlier G.O.Ms.No.338 Finance (PC) Department dated 01.01.2006 and hence the recovery ought not to have been made by giving retrospective effect and that too in pursuant to the letter of the Commissioner dated 21.05.2015. It is a well settled principle of service law that a statutory entitlement cannot be withdrawn through an administrative order. So the order dated 05.05.2000 is without authority and hence it is liable to be set aside as against the petitioner.

6. It is reliably learnt that even though the impugned order was passed, so far recovery has not been made, in view of the pendency of the writ petition. It is submitted that the petitioner retired in the year 2023 but his retirement benefits have not been settled so far.

7. In view of the above stated reasons, this Writ Petition is allowed



W.P.No.7750/2020

and the order passed by the third respondent in Na.Ka.No.J1/2828/2020 dated 05.05.2020 is hereby quashed and the third respondent is directed to pass orders with regard to the disbursement of the retiral benefits of the petitioner in accordance with his entitlement, within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

12.02.2024

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

1. The Director of Local Fund Audit,
Chennai – 600 035.
2. The Assistant Commissioner /
The Assistant Commissioner (i/c),
Hasthampatti Ward Office,
Salem City Corporation,
Hasthampatti, Salem.



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W.P.No.7750/2020

R.N.MANJULA ,J.

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W.P. No.7750 of 2020

12.02.2024