



W.P.No.9636 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.9636 of 2015

and

W.M.P.No.1 of 2015

V.Jothi

... Petitioner

v.

1.The Collector,
Cuddalore, Cuddalore District.

2.The Sub Collector,
Chidambaram, Cuddalore District.

3.The Principal Accountant General
(Accounts & Entitlements), Tamil Nadu,
381, Anna Salai, Chennai 600 018.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent in Na.Ka./A2/1048/2014 dated 06.01.2015 and quash the same and direct the respondents to restore the pay fixation as existed before the issue of the impugned order and grant all



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consequential benefits to the petitioner.

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For petitioner : M/s P.Rajendran
For Respondents : Mr.Abishek Murthy for R1 and R2,
Government Advocate.
Mr.V.Vijay Shankar for R3.

ORDER

The writ petition is filed challenging the impugned order of the 2nd respondent dated 06.01.2015 in Na.Ka./A2/1048/2014 on the limited ground that there was reduction of pay without putting the petitioner on notice and thus the consequential recovery is challenged as bad and illegal.

2. The petitioner was appointed as Surveyor-cum-Draughtsman on consolidated pay in the Survey Department on 16.03.1983. Thereafter, the petitioner was appointed as Record Clerk in the Revenue Department on 30.01.1990 and promoted as Junior Assistant on 05.09.1990 and was granted Selection Grade in the said post on 20.08.2003. The selection grade scale of pay for the post of Junior Assistant during the relevant time was Rs.4000-100-6000 (the ordinary grade being Rs.3200-85-4900). There was a revision of grade scale pay of Junior Assistant to Rs.5200-20200+GP 2400 with effect from 01.01.2006



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and based on the One Man Commission recommendations, the Government had issued orders dated 08.11.2010 in Letter No.63305/ Pay Cell / 2010-11. The petitioner was promoted as Assistant on 01.06.2006. Since the petitioner was granted Selection Grade in the post of Junior Assistant before 01.01.2006, by applying the above Government order dated 08.11.2010, the petitioner's pay was fixed in the said revised selection grade of Rs.9300-34800 + GP 4200 in the post of Junior Assistant with effect from 01.01.2006 by an order issued by the Sub Collector, Chidambaram in Mu.Mu.A2/3488/2013 dated 28.11.2013. The petitioner was promoted as Assistant on 01.06.2006 and since the selection grade scale of Junior Assistant and the ordinary grade scale of Assistant were identical, the petitioner was awarded selection grade in the post of Assistant with effect from 20.08.2013 by counting the service rendered in the selection grade Junior Assistant and the petitioner's pay was fixed at Rs.15,080/- in the Pay Band of Rs.9300-34,800 with Grade Pay of Rs.4200/-. The petitioner retired from service on 30.06.2014 and at the time of his retirement, the petitioner was drawing a pay of Rs.15,660/- plus Grade Pay of Rs.4200/- in the Pay Band of Rs.9300-34,800.

3. It is submitted that after the petitioner's retirement, the impugned order was passed by the Sub Collector, Chidambaram / the 2nd respondent herein while



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also directing recovery of a sum of Rs.2,80,456/- stated to have been paid in excess apart from a sum of Rs.1,05,600/- towards excess payment of surrender of earned leave and unearned leave, totalling to Rs.3,86,056/- from the petitioner's DCRG.

4. The limited ground of challenge was on the premise that the impugned order of re-fixation has been made without putting the petitioner on show cause notice. It was further submitted that the petitioner is a Group C grade employee and thus, any recovery post retirement may not be permissible in view of the decision of the Hon'ble Supreme Court in the case of *State of Punjab v. Rafiq Masih*, reported in (2015) 4 SCC 334.

5. It was submitted that the petitioner may be granted opportunity and after hearing the petitioner, the respondent authority may pass orders on merit to which the learned counsel for the respondents does not have any serious objection and would submit that they will issue show cause notice within a period of four weeks.

6. Recording the submission of the learned counsel for the respondents, the respondent authority is directed to issue show cause notice within a period of four



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weeks from the date of receipt of a copy of this order and the petitioner may respond to it within a period of four weeks thereafter. After hearing the petitioner, orders shall be passed by the appropriate authority within a period of eight weeks thereon in accordance with law.

7. In view of the above, the writ petition stands disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

18.07.2024

Index: Yes/No
Internet: Yes/No
Speaking / Non speaking order
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MOHAMMED SHAFFIQ,J.

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To

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