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W.P.No.15889 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.15889 of 2020

&

W.M.P.No.13480 of 2020

M.Arunachalam
S/o.Maduranayagam

... Petitioner

Vs.

1. The Director of Local Fund Audit
Municipal Pension Verification
Combined Finance Department Office Complex
Behind Veterinary Hospital
IV Floor, Nandanam
Chennai – 600 035

2. The Commissioner
Udumalaipettai Municipality
Tiruppur District

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Declaration declaring that the reduction of Grade pay from Rs.2600/- to Rs.1800/- through proceedings of the 1st respondent in Mu.Mu.No.2941/ந.ஐ.ஈ (1)/2015, dated 01.11.2015 as null and void and consequential order of recovery passed through P.P.O.No.26213 in Proceeding No.MPV 1/ 38555/15 dated 08.03.2016 signed on 11.03.2016 in respect of recovery of Rs.1,11,869/- and thereby



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direct the respondents to revise the pension based on the last drawn scale of pay.

For Petitioner : Mr.A.R.Nixon

For Respondents : Mr.S.Prabhakaran
Government Advocate for R1

Mr.A.S.Thambuswamy for R2

O R D E R

The writ petition has been filed for a declaration that the reduction of Grade pay from Rs.2600/- to Rs.1800/- through proceedings of the 1st respondent dated 01.11.2015 and consequential order of recovery passed through P.P.O.No.26213 in Proceeding No.MPV 1/ 38555/15 dated 08.03.2016 signed on 11.03.2016 in respect of recovery of Rs.1,11,869/- as null and void and consequently, direct the respondents to revise the pension based on the last drawn scale of pay.

2. The case of the petitioner is that he was appointed as a Bus Stand Watchman in Udumalaipettai Municipality and retired from service on 31.12.2014 on attaining superannuation. After retirement of the petitioner,



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on 01.11.2015, the first respondent passed an order in Mu.Mu.No.2941/ந.ஜ.ஈ (1)/2015 stating that the post of Watchman is not a Trade Post and hence, the Grade Pay has to be revised from Rs.2600/- to Rs.1800/-.

3. The learned counsel appearing for the petitioner would submit that the impugned order was passed without any notice to the writ petitioner and no opportunity of hearing was given to the writ petitioner and therefore, the same is in violation of principles of natural justice.

4. Thereafter, the first respondent vide proceedings in Ni.Mu.No.385555/MPV(1)/2015 dated 08.03.2016 passed an order of recovery to recover a sum of Rs.1,11,869/-. The learned counsel further submitted that the petitioner was not put on notice with regard to the proceedings of first respondent dated 01.11.2015 as well as the order of recovery dated 08.03.2016. Hence, both the orders are in violation of principles of natural justice.

5. The learned Government Advocate appearing for the first respondent adverting to counter affidavit dated 18.10.2024 submitted that vide the Letter of Director of Municipal Administration dated 21.05.2015,

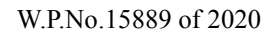


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the post of Bus Stand Watchman was removed from the list of Technical Posts, the categorization of posts of technical and unskilled was revised and those post removed from the 'Technical Posts' were reverted back to their old scale of pay as per G.O.Ms.234, Finance (Pay Cell) Department, dated 01.06.2009 and also it has been directed to recover the amount paid in excess. Thereafter, it was also directed to revise the Grade pay of the petitioner to Rs.1800/- and to deduct the amount paid in excess vide letter of the Assistant Director, Directorate of Local Fund Audit in Mu.Mu.No.20941/MPV(1)/2015 dated 01.11.2015 and copy of this letter was also marked to the petitioner. Thereafter, the first respondent vide proceedings dated 08.03.2016 passed order of recovery and a sum of Rs.1,11,869/- was recovered from the petitioner and was sent to the second respondent, the Commissioner, Udumalaipettai Municipality vide cheque No.IOB/836850 dated 31.05.2016.

6. The learned Government Advocate further submitted that a proper communication was sent to the Commissioner, Udumalaipettai Municipality and a copy was also marked to the petitioner and the



7. The second respondent has also filed a counter affidavit on 05.09.2021. The learned Standing counsel appearing for the second respondent submitted that the second respondent on receipt of the proceedings of the first respondent dated 01.11.2015 re-fixed the salary of the petitioner by the proceedings in Na.Ka.No.936/2015/4845 dated 01.12.2016 and a copy was also sent to the petitioner. As per the re-fixed salary, the petitioner was paid in excess a sum of Rs.1,11,869/- and requested the first respondent to deduct the said amount from the Death-cum-Retirement benefits of the petitioner. Learned Standing counsel also submitted that the petitioner did not raise any objection to the proceedings of the second respondent dated 01.12.2016.

8. Heard both sides and perused the materials available on records.

9. In this case, the petitioner worked as a Bus Stand Watchman at



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Udumalaipettai Municipality and he retired from service on 31.12.2014 on attaining superannuation. The first respondent based on the letter dated 21.05.2015 issued by the Director of Municipal Administration vide Roc.Lr.No.45529/F3/2010 has instructed all the Municipality Commissioners and all Regional Director Municipal Administration to cancel the pay already fixed in the higher scale with reference to the letter in ROC.No.45529/F3/2010 dated 01.10.2012 and the pay of the individuals shall be re-fixed with respect to this instructions and the excess pay due to the re-fixation should be recovered from the salary of the individuals concerned. It was also directed that the pension proposals of retired employees should be forwarded to the Director Local Fund Audit based on the revised pay fixation as per these instructions. **It is pertinent to note that this letter was communicated only to the Authorities and not to the petitioner. Hence, the petitioner was not aware of this letter dated 21.05.2015. The recovery order dated 08.03.2016 was issued by the first respondent vide its proceedings in Letter bearing reference Ni.Mu.No.38555/MPV(1)/2015 directing recovery of a sum of**



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Rs.1,11,869/- being the excess amount paid to the writ petitioner which has to be recovered as per the letter of the Director of Municipal Administration dated 21.05.2015. The entire amount was recovered before the filing of the writ petition. It is pertinent to note that the recovery was ordered on 08.03.2016 and the same was challenged after a delay of five years, that too only in the year 2020. However, this Court is not inclined to go into that aspect for the reason that the letter of the Director of Municipal Administration dated 21.05.2015 which the respondents are referring was not sent to the petitioner and it was only sent to the authorities. The recovery order dated 08.03.2016 was issued directing recovery of said amount of Rs.1,11,869/- without giving prior notice or opportunity of personal hearing and the same is in violation of principles of natural justice. It is also pertinent to note that letter sent by the Director of Municipal Administration is dated 21.05.2015 which is after the date of superannuation of the writ petitioner on 31.12.2014. The Grade pay at the rate of Rs.2,600/- was fixed on 01.01.2006. The letter dated 21.05.2015 was not applicable to the writ petitioner since he



got superannuated prior to the letter i.e., on 31.12.2024.

10. In view of the factual matrix of the case, the impugned order passed by the 1st respondent dated 01.11.2015 and consequential order of recovery passed through P.P.O.No.26213 in Proceeding No.MPV 1/38555/15 dated 08.03.2016 are liable to be set aside and the same are set aside.

11.This Court is inclined to pass the following directions:

i) The second respondent is directed to return the amount recovered from the petitioner by the first respondent i.e., Rs.1,11,869/- within a period of six weeks from the date of receipt of a copy of this order.

ii) On receipt of the said amount by the first respondent, the same shall be reimbursed / refunded to the petitioner along with 6% interest within a period of six weeks thereafter.



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12. In the result, this writ petition is allowed with the above directions and there shall be no order as to costs.

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Index : Yes / No

Speaking Order : Yes / No

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To

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