

R.Grahamdurai. Vs. the Director of Public Health and Preventive Medicine Teynampet, and ors.

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Court : Chennai

Decided On : Aug-16-2010

Judge : K.B.K.Vasuki, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P. No.8746 of 2009 and M.P.Nos.1 & 2 of 2010

Appellant : R.Grahamdurai.

Respondent : The Director of Public Health and Preventive Medicine Teynampet, and ors.

Advocate for Def. : M/s.E.Ranganayaki, Adv.

Advocate for Pet/Ap. : Mr.K.Rajkumar, Adv.

Judgement :

1. On consent, this writ petition is taken up for final hearing.
2. The writ petition is filed against the order of the second respondent made in his proceedings Moo.Mu.No.4713/S5/08 dated 03.10.2008 and to quash the same and to forbear the respondents from in any manner to refix and recover the pay already fixed and sanctioned to the petitioner about 11 years back.

3. The brief facts relevant herein are stated as follows:

i)The petitioner was appointed as Surveillance field worker on 01.03.1965 and was promoted as multi-purpose Health Assistant in Public Health Department on 01.03.1965 and was sanctioned selection grade and special grade in the same post on 01.10.1978 and 04.11.1988 respectively. Whiles, the petitioner was due to be promoted to the post of multi-purpose supervisor/ Health Inspector Grade I during 1997 and when his claim for promotion was denied, he approached the Tamil Nadu Administrative Tribunal, Chennai and the petitioner's case was disposed of along with batch of cases in O.A.No.7778 of 1993 by an order dated 07.01.1994 and the same was disposed in favour of the petitioner and others, with further direction issued to the Department for refixation of seniority and consequential promotion. The petitioner was promoted to the post of multi-purpose Health Supervisor with effect from 19.01.1989 but notional benefits which was given effect to only from 05.12.1997, the date on which the proceedings for promotion was given and thereafter, the petitioner's pay was fixed in the post of multi-purpose Health Supervisor with effect from 19.01.1989 and the petitioner also retired from service on 29.02.2000 and his pensionary and retirement benefits were fixed as per the revised pay. The petitioner has been receiving the benefits of pay fixation for the past 11 years. ii)Whiles, the petitioner was issued with notice on 13.03.2007 thereby directing refund of a sum of Rs.20,864/- representing the amount received by the petitioner in excess. The petitioner has duly sent his representations to the respondent on 27.12.2007 and 13.02.2008 as to how his pay was refixed, while he was in service in accordance with the rule that he was not served with any notice with copy of the auditor's report that no opportunity is given to him to say his objection against the auditor's report and that the department has no authority to revise refixation and recover the amount after 11 years that too after his retirement. The objections so raised were not duly considered by the respondent/department but he proceeded to pass the impugned proceedings dated 03.10.2008 which compelled the petitioner, to make representation to the appointing authority in this regard. Thereafter, he approached this Court by filing this writ petition.

4. While according to the petitioner, earlier refixation of pay is made in accordance with rule by the department itself and there is no fault or misrepresentation on the part of the petitioner and he had no role to play in the matter of his pay refixation and the petitioner has all along been receiving pension as per his revised pay and the same cannot be recovered after much longer time that too without any authority to do so and without notice to the petitioner and the impugned order is hence without jurisdiction, in violation of the principles of natural justice invalid and illegal and is liable to be set aside.

5. Per contra, the learned Additional Government Pleader would try to justify the impugned revision of pay refixation and recovery of the excess amount on the ground that it is found to be erroneous in the audit objection and the department has every authority to rectify the error at any point of time, notwithstanding the retirement of the employee concerned.

6. Heard the rival submissions made on either side.

7. It is not in dispute that the pay refixation based on which the petitioner has been receiving salary till his retirement and pension from the date of his retirement till date was made by the department itself as early as on 05.12.1997, the copy of the order is enclosed at page 8 in the typed set of papers and the same is duly entered in his service register to the effect that the pay is refixed with effect from 19.01.1989 in the category of Health Inspector Grade I. It is noteworthy to mention at this stage that the refixation of pay with other attending benefits was made not only to the petitioner but also group of employees in compliance with the order of Tamil Nadu Administrative Tribunal. It is not the case of the respondents that the petitioner had any role to play in the matter of his pay refixation and the error committed by the department is due to any fraud or misrepresentation or suppression of any fact by the petitioner herein.

8. As a matter of fact, the second respondent has in paragraphs 6 and 11 of the counter affidavit, clearly stated as to how the petitioner's pay is revised in the original scale of pay of promotional post. It is stated in detail that the petitioner was eligible to get the selection grade scale of pay, if he had exercised their option within the time limit and the petitioner had not exercised his option in getting the

scale of pay for promotional post as such he was as per Rule 22 of Fundamental Rule entitled to get ordinary scale of pay and his pay was accordingly fixed. That being so the revision of pay now undertaken nearly 11 years, after the original fixation on 19.01.1989 that too after his retirement cannot be allowed to stand on any ground much less the ground mentioned that it is based on audit objection as a matter of fact one such ground is not at all disclosed in the impugned order.

9. In the considered view of this Court, any amount of explanation given by the learned Additional Government Pleader cannot be accepted to justify the order impugned herein. Even assuming it to be acceptable that rejection was wrongly made on earlier occasion, the same cannot be sought to be revised and the amount already paid cannot be sought to be recovered at this length of time. This Court has both in reported and unreported Judgments disapproved such action on the part of the authority concerned. The reported Judgments of Division Bench of our High Court are 1) 2006 (1) MLJ 143, Palavesmuthu .Vs. Tamil Nadu Administrative Tribunal rep.by its Registrar, Chennai and others. ii) 2008(5) MLJ 1331, In P.Lingam .Vs. Union of India. The unreported Judgments are made in i) batch of W.P.Nos.40588 to 40593 of 2005 dated 22.11.2007 ii) W.P.No.11707 of 2007 G.Savarimuthu .Vs. The Director to Local Fund Audit dated 10.09.2009 and iii) W.P.No.964 of 2009 in Selvaraj .Vs. The Commissioner of Municipal Administration, Chennai dated 30.04.2010. In all these writ petitions, orders sought to be quashed are similar identical orders of revision of refixation and recovery of excess amount already paid.

10. In the cases above referred to also the refixation is done on the basis of identical audit objection and after the retirement of the employees concerned. The Hon'ble Division Bench of our High Court is pleased to quash the impugned orders of refixation and recovery as sought for by the writ petitioners therein.

11. Our Hon'ble Division Bench has in the Judgment reported in 2006 (1) MLJ 143 observed that even if it is accepted for argument sake that salary of the petitioner is fixed in a wrong scale of pay, it is the fault committed by the Department and its officers, for which the petitioner should not be penalized after a lapse of number of years that too after the retirement of employee. The Hon'ble Division bench has

referred to the observation of Apex Court in the cases reported in i) AIR 1995 SCW 1780 in Sahib Ram .vs. State of Haryana and ii) AIR 1974 SC 1889 in Divisional Superintendent, Eastern Railway, Dinapur .V. L.N.Kashri, in paragraphs-7 and 8 of its judgment and extracted the same as follows: "it is not on account of any misrepresentation made by the appellant that the benefit of higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to at fault. Under these circumstances, the amount paid till date may not be recovered from the appellant." The Supreme Court has in the case of Divisional Superintendent, Eastern Railway, Dinapur and Others L.N.Kashri and others reported in A.I.R. 1974 S.C.1889 observed as follows. "The appellants having fixed the scale and confirmed the respondents could not reduce the scale without giving any opportunity to the respondents to be heard. Further more, the respondents on confirmation became entitled to rights to the post and to the scale of pay fixed by the Board".

12. Our High Court has in the other Judgment reported in (5) MLJ 1293 of our High Court by following earlier Apex Court Judgment reported in 1994 (2) SCC 521 Shyam Babu Verma and Others .Vs. Union of India and Others quashed the impugned order and recovery, thereby reducing the pay after 12 years for no fault on the part of the petitioner that too without furnishing the copy of the audit objection, on the ground of violation of principles of natural justice. Similar view is followed in the subsequent Judgments of learned single Judge of this Court. The legal principles laid down in the authorities referred above is squarely applicable to the issue involved in the instant case as such the order of the second respondent, which is impugned herein is also to be held as improper, illegal, in violation of principles of natural justice and without jurisdiction and is hence legally and factually unsustainable.

13. In the result, the writ petition is allowed as prayed for. No costs. The connected miscellaneous petitions are closed.

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