

T.Selvaraj Vs. the Executive Engineer

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Court : Chennai

Decided On : Apr-09-2012

Judge : Vinod K.Sharma, J.

Appeal No. : W.P.No.4987 of 2007 (O.A.No.8010 of 2001)

Appellant : T.Selvaraj

Respondent : The Executive Engineer

Advocate for Def. : Mr.V.Jayaprakash Narayanan, Adv.

Advocate for Pet/Ap. : Mr.P.Sivaprakasam, Adv

Judgement :

PRAYER:This petition came to be numbered by transfer of O.A.No. 8010 of 2001 from the file of the Tamil Nadu Administrative Tribunal, for issuance of a writ in the nature of Certiorari, to quash the impugned order passed by the first respondent under proceedings No.Pa.A2/26/2001 dated 05.10.2001 and the consequential order of recovery passed by the second respondent under proceedings No.4/2/2001/Ka.Ka. Dated 05.12.2001.

ORDER

1. The petitioner joined P.W.D. Department as Maistry on 21.08.1965. The service of the petitioner was provincialised on 24.11.1970 vide order dated 08.01.1971.

2. The Government of Tamil Nadu decided to merge certain cadres at the time of implementation new pay scales. The post of Maistry Grade I was merged with the Work Inspector Grade I and re-designated as Work Inspector Grade I. The order of merger was passed on 03.02.1973 and the pay scale of the petitioner was fixed in the pay Scale of Rs.180-5-240-10-270.

3. The Chief Engineer, Public Works Department sought clarification from the Government whether the non-provincialised service of worker/employee having over five years was also be provincialised.

4. On 29.11.1971 the Government of Tamil Nadu issued clarification, clarifying that the services of the non provincialised work charged establishment members in the P.W.D. and Highways and Rural works department with over five years of service as on 24.11.1970 be also provincialised.

5. On 17.05.1973, the matter was further clarified regarding pay fixation of the work charged establishment personnel, who had been given adhoc increase of Rs.20/- as per G.O.Ms.No.222, Finance, dated 08.02.1971.

6. The Pay scales were thereafter fixed in three categories; i.e. Rs.160-5-240, Rs.170-5-255 and Rs.250-10-400.

7. In the Government letter, it was further stipulated that the workers who had put in service upto 10 years were to be fixed in Grade III, whereas workers with 10 to 20 years of service were placed in Grade II, whereas employees who put in more than 20 years of service were to be placed in Grade I.

8. It was in view of the government instructions regarding fitment of grade, that the petitioner was reverted to the post of Work Inspector Grade II.

9. On 20.01.1981, the Chief Engineer, P.W.D. (General) issued clarification by issuing circular stating therein as under:

"certain members of the erstwhile work charged establishment who have been promoted re-designated after 24.11.1970 and before 13.05.1973 well within the powers of Superintendent Engineers and who have been regularized with effect

from 1.1.1977 vide G.O.Ms.No.51, Finance (FR II) Department, dated 14.01.1977 and cadre strength of regular posts obtained, have now been reverted to the original posts held by them as on 24.11.1970."

10. On 08.03.1991, the petitioner was placed in Selection Grade I, in the pay scale of Rs.1400-50-2003-60-2600 with effect from 24.11.1990, as the petitioner had completed 20 years of provincialised service as on 24.11.1990.

11. On 28.02.1992, the petitioner filed a representation to the Executive Engineer/the respondent No.1, for revision of his pay as per the instructions and clarification by the Chief Engineer, P.W.D., dt.28.01.1991.

12 The representation filed by the petitioner was accepted and vide order dated 22.09.1993 pay of the petitioner was refixed in the category of Work Inspector Grade I at Rs.180-5-260-10-270 as on 24.11.1970 and thereafter the petitioner was given revised pay scale.

13. Thereafter on 05.10.2001, the impugned order was passed, reverting the petitioner to the post of Work Inspector Grade II with effect from 24.11.1970 with consequential order directing recovery of Rs.1,49,973/- (Rupees one lakh forty nine thousand nine hundred and seventy three only) in equated monthly installment of Rs.2000/- per month from December 2001 and remaining amount of Rs.69,973/- (Rupees sixty nine thousand nine hundred and seventy three only) was ordered to be recovered out of Death cum Retirement Gratuity of the petitioner.

14. The petitioner challenged the impugned order; firstly, on the ground that the impugned order though affecting civil right of the petitioner, was passed without issuing any show cause notice to the petitioner.

15. Secondly, that benefit even if wrongly given could not be recovered, in the absence of any allegation of fraud or mis-representation.

16. Thirdly, that the impugned order is totally arbitrary, as it does not take note of the specific instruction of the Government that a person with five years of service as on 24.11.1970 in P.W.D., Highways and Rural works department was to be

provincialised on the post held by the employee irrespective of the fact, whether they have completed five years of service in the present post or not.

17. The petitioner had already put in more than 5 years of service at the time of merger of posts, therefore he was rightly placed in Work Inspector Grade I, therefore, there was no justification whatsoever, to revert the petitioner to Work Inspector Grade II with retrospective effect.

18. The learned Additional Govt. Pleader contends that no fault can be found with the impugned order, as the benefit wrongly granted to the petitioner has been withdrawn. The petitioner cannot take benefit of wrong order, as the petitioner was not entitled to be placed in Work Inspector Grade I with effect from 24.11.1970. The impugned order therefore, was rightly passed reverting the petitioner to the post of Work Inspector Grade II with effect from 24.11.1970 with the consequential order of recovery.

19. On consideration, I find this writ petition deserves to succeed. The impugned order has been passed without issuing show cause notice to the petitioner. The impugned order therefore, is against well settled principle of law, that order affecting civil rights of the party cannot be passed without issuing show cause notice.

20. The impugned order of recovery also cannot be sustained in view of the settled law that the benefit even if wrongly given, cannot be withdrawn with retrospective effect, in absence of allegation of fraud or misrepresentation.

21. Consequently, this writ petition is allowed. The impugned order is set aside. A writ in the nature of mandamus is issued directing the respondent to refund the recovered amount of Rs.1,49,973/- (Rupees one lakh forty nine thousand nine hundred and seventy three only) within two months of receipt of certified copy of this order.

No costs.