

(2011) 12 MAD CK 0073
In the Madras High Court
Case No : Writ Petition No. 27594 of 2005

B. Sukumaran

APPELLANT

Vs

The Principal Accountant General (Tamil Nadu), (Accounts and Entitlements), Teynampet, Chennai 18 and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Citation : (2011) 12 MAD CK 0073

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : A.R. Suresh, for the Appellant; V. Vijay Shankar for 1st Respondent and Mr. V. Subbiah, Special Govt. Pleader for Respondents 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice D. Hariparanthaman

1. The petitioner was appointed as Higher Grade Teacher in Adi Dravidar Elementary School, Dharmanidhi, Arakonam Taluk on 19.09.1970. On 01.01.1971, he was upgraded as Secondary Grade Teacher. Later, he was promoted as Middle School Head Master (B.T. Grade) during the year 1983. While so, the District Adi Dravidar Welfare Officer, Chengalpattu M.G.R District at Kancheepuram granted Selection Grade in the cadre of Middle School Head Master with effect from 1.1.1981 and Special Grade in the cadre of Middle School Head Master with effect from 1.1.1991 based on G.O.Ms.No. 1178, (Education Department) dated 22.12.1993 to the petitioner in his Proceedings K. Dis. 58696/96(J2), dated 25.7.1996. Therefore, the petitioner was granted monetary benefits based on the aforesaid order dated 25.7.1996. Thereafter, the fifth respondent passed the order dated 11.07.2001 for recovery of a sum of Rs. 1,13,592/-. The said order of recovery dated 11.7.2001 was passed by the fifth respondent stating that the petitioner was erroneously granted benefits based on the order dated 25.7.1996 passed by the District Adi Dravidar Welfare Officer,

Chengalpattu M.G.R District at Kancheepuram and therefore, the excess payment of Rs. 1,13,592/- was paid to him. The fourth respondent, the District Adi Dravidar Welfare, Kancheepuram served a proceeding in Na.Ka.No. 24369/98J.4, dated 29.4.1998 on the petitioner along with the order dated 11.7.2001 passed by the fifth respondent.

2. In such circumstances, the petitioner filed Original Application No. 4912 of 2001 to quash the orders dated 29.4.1998 and 11.7.2001 of the fourth and fifth respondents respectively.

3. While admitting the Original Application No. 4912 of 2001, the Tamil Nadu Administrative Tribunal granted interim stay on 31.7.2001 for the order of recovery. On abolition of the Tribunal, the said Original Application No. 4912 of 2001 was transferred to this Court and renumbered as writ petition No. 27594 of 2005.

4. The respondents filed the counter affidavit refuting the allegations.

5. The learned counsel appearing for the petitioner contends that the impugned orders were passed without notice and without hearing the petitioner and in violation of principles of natural justice. It is further contended that the order dated 25.7.1996 granting certain benefits was passed by the fourth respondent on his own and not on the basis of any misrepresentation made by the petitioner. Hence, if there was any erroneous fixation, the petitioner could not be blamed for the same and the order of recovery passed by the fifth respondent is bad and illegal.

6. It is also submitted that the order of recovery dated 11.07.2001 was passed based on the Audit Objection and the petitioner has not given such objection based on which the recovery order was passed.

7. On the other hand, Mr. V. Vijay Shankar, learned counsel for the first respondent and Mr. V. Subbiah, learned Special Government Pleader for the respondents 2 to 5 submit that there was an erroneous fixation and therefore, excess amount was paid to the petitioner. Hence, there is no infirmity in the impugned orders dated 29.4.1998 and 11.7.001 passed by the fourth and fifth respondents respectively.

8. I have considered the submission made by the learned counsel on either side.

9. The petitioner was granted certain benefits by the fourth respondent in the order dated 25.7.1996. The petitioner was granted Selection Grade in 1981 and Special Grade in 1991 retrospectively and the monetary benefits were also paid to him on the basis of G.O.Ms.No. 1178,(Education Department) dated 22.12.1993. While so, the fourth respondent passed the order dated 29.4.1998 based on the Audit Objection stating that the benefits granted in the order dated 25.7.1996 are not proper and hence, he sought to cancel the same. Consequent to the said order dated 29.4.1998, the order of recovery dated 11.07.2001 was passed by the fifth respondent. However, the said order dated 29.4.1998 was not

communicated to the petitioner. The order dated 29.4.1998 of the fourth respondent was passed based on the Audit party's report dated 4.3.1998. The report of Audit party was also not furnished to the petitioner. The petitioner was also not heard before passing of the order dated 29.4.1998. Thus the order dated 29.4.1998 was passed in blatant violation of principles of natural justice.

10. It is well settled that no adverse order could be passed resulting in civil consequences without hearing the aggrieved person. In this case, the order dated 29.4.1998 was passed without hearing the petitioner. Consequently, the order dated 11.7.2001 was passed by the fifth respondent for recovery of Rs. 1,13,592/- and at that time only, the order dated 29.4.1998 was furnished to the petitioner.

11. In paragraph 8 of the counter affidavit filed by the fourth respondent, the aforesaid facts are admitted. Paragraph 8 of the counter affidavit is extracted hereunder.

With regard to the averments made in para VI(5) of the petition are concerned, I submit and deny the allegations contained in this para as untrue and incorrect. I submit that it is wrong to say that the said order of recovery dated 29.4.1998 was communicated to the applicant only on 23.7.2001. I submit that the selection grade and special grade to the petitioner have been wrongly sanctioned and the same has been pointed out in the departmental audit. I submit that, as such, the irregular sanction of the selection grade and special grade to the petitioner made in the proceedings dated 25.7.1996 has been rectified as per the proceedings dated 29.4.1998 of this respondent by canceling the same and by ordering recovery of the arrears wrongly paid to the petitioner. I submit that the order dated 29.4.1998 of this respondent is legally and constitutionally valid and is not liable to be quashed, as alleged.

12. In the meantime, the petitioner also retired from service in the year 2006 and he was permitted to continue in the service till the end of the academic year.

13. The Division Bench of this Court in D. Palavesamuthu Vs. The Tamil Nadu Administrative Tribunal, held that if the re-fixation was not made based on any misrepresentation, there cannot be any recovery from the Employee. The relevant passage from paragraph 6 of the said order is extracted hereunder.

We are of the view that the course and method adopted by the Tribunal cannot be appreciated in the case of the petitioner. Even if it is accepted for the argument sake that salary of the petitioner is fixed in a wrong scale of pay, it is the fault committed by the Department and their Officers, for which the petitioner should not be penalized after a lapse of number of years that too after retirement of the petitioner.

14. The above said judgment is squarely applicable to the facts of this case. As stated above, in the case on hand also, the petitioner has already retired from service.

15. In view of the aforesaid reasons, the impugned orders dated 29.4.1998 and 11.07.2001 of the fourth and fifth respondents respectively are liable to be quashed and the same are quashed.

16. The writ petition is allowed on the above terms. No costs.