

(2002) 06 MAD CK 0171

In the Madras High Court

Case No : Writ Petition No. 6841 of 1992 and W.P.M.P. No's. 9799 and 9800 of 1992

C. Ethiraj

APPELLANT

Vs

Tamil Nadu Housing Board

RESPONDENT

Date of Decision : 10-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 06 MAD CK 0171

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : C.K. Chandrasekaran, for the Appellant; D. Veerasekaran, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the order dated 27.3.1992 issued by the respondent Board initiating recovery proceedings on the ground that he had been paid excess amount, the petitioner has filed the above writ petition to quash the same and for direction to refund the recoveries made from March 1992 onwards.

2. The case of the petitioner is briefly stated hereunder. According to him on 1.4.1972 he was appointed as a Watchman in the respondent Board on daily wages. He was given consolidated pay of Rs.120/- per month. However, he was discharging the duties of a work maistry. On 22.7.1977 the Board regularised his services as a work maistry in the time scale of Rs.160-5-240. However, the Board continued to give him consolidated salary of a watchman. Hence he made a representation to the Board to give him the pay scale of work maistry. The Board by its memo dated 16.7.1979 ordered to pay him the time scale of Rs.160-5-240, from the date of his appointment. By this he was entitled to get his arrears of salary from 1.4.1972, the date on which he joined the respondent Board. He was accordingly paid the salary of work-maistry from 1979 and the arrears from 1.4.1972 were subsequently paid on 20.8.1979. While so, the

respondent Board suddenly has issued the impugned memo dated 27.3.1992, wherein it is stated that the Audit made in 1985-86 I half-year had objected to his pay fixation in the scale of Rs.160-5-240 in the post of work maistry. Accordingly, by the impugned order, the respondent sought to recover the alleged excess of pay between that of a Watchman and a Work-maistry. The Board seeks to recover a sum of Rs.14,680/- and started recovering Rs.100/- per month from March 1992. The recovery is illegal and hence the present writ petition.

3. Though the writ petition was admitted even on 12.5.1992 and Rule Nisi was served on the respondent, the Board has not chosen to file counter affidavit highlighting their stand.

4. Heard the learned counsel appearing for the petitioner as well as the respondent.

5. Learned counsel for the petitioner after taking me through the earlier orders passed by the Board regularising the services as work maistry, audit objection in 1985-86 I half year and the impugned order raised the following contentions:

i. Without a notice or opportunity to show cause, the impugned order passed by the respondent Board for recovery of alleged excess amount paid cannot be sustained.

ii. Though it is stated that the objection was raised by the audit authority in 1985-86 I part, the impugned memo had been issued nearly after six years i.e. during 1992. Hence the same cannot be sustained.

iii. Even on merits in the light of the orders passed by the Board regularising the services of the petitioner as work maistry along with others with effect from the date of his appointment, the respondent is not justified in initiating recovery proceedings.

6. On the other hand, learned counsel appearing for the Board, on the basis of the impugned memo, contended that in the light of the objection raised by the audit authority, the respondent is justified in initiating the recovery proceedings and accordingly prayed for dismissal of the writ petition.

7. I have carefully considered the rival submissions.

8. So far as the first contention is concerned, it is fairly stated by the counsel for the respondent that prior to passing of the impugned memo, the petitioner was not given notice and he prayed that by setting aside the order, the Board may be given an opportunity to pursue the same afresh, after notice to the petitioner. I am not inclined to adopt the said course for the following reasons.

9. As admitted by the respondent and as seen from the impugned proceedings, before the order of recovery proceedings, the petitioner was not put on notice or opportunity to put forth his claim. In such circumstances, particularly, when his scale of pay revised by the Board that too after passing an order of regularisation

by the Board itself, they are not justified in passing the order without affording opportunity to the petitioner . On this ground, the impugned order is liable to be quashed.

10. As rightly pointed out by the learned counsel for the petitioner, the present order came to be issued by the Board pursuant to the objection raised by the audit authority in I quarter of 1985-96. I have already referred to the fact that the respondent has not filed counter affidavit highlighting their stand. In the absence of any other material for not taking action subsequent to the alleged defect/mistake pointed out by the audit authority, there is no acceptable reason for the inordinate delay of seven years for issuing the impugned proceedings. On this ground also, the same is liable to be quashed.

11. As rightly argued by the learned counsel for the petitioner, by proceedings dated 22.7.1977 the officers of the respondent Board pursuant to the orders of the Chairman regularised the services of the petitioner along with others and the same was given effect from 20.12.1971. This is clear from the proceedings of the Board's officers dated 22.7.1977 and 16.7.1979. Both the said orders have been placed at page Nos. 5 & 7 in the typed set of papers filed along with the writ petition. Having regularised the services of the petitioner as work maistry and having fixed his salary in the appropriate time scale of pay by passing appropriate orders in 1977-1979, I am of the view that the respondent is not justified in varying the earlier order without an opportunity to the petitioner and without assigning any acceptable reason except referring to the audit objection of the year 1985 -86. Accordingly, the said contention of the counsel for the petitioner is acceptable.

12. It is also relevant to refer the decision of the Supreme Court reported in Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , wherein in similar circumstances, their Lordships have held that since the petitioners received the higher scale due to no fault of theirs, it is only just and proper not to recover any excess amount already paid to them. In the light of the factual position, which I have already narrated, the said observation of the Supreme Court is squarely applicable to the case of the petitioner. Accordingly I hold that it is just and proper not to recover any excess amount already paid to the petitioner.

13. In the light of what is stated above, the impugned proceeding of the respondent dated 27.3.1992 is quashed and the writ petition is allowed. In view of the above order, the respondent is directed to refund the recoveries made from March 1992. Consequently, the connected W.M.Ps are closed. No costs.