(2015) 02 MAD CK 0141

In the Madras High Court

Case No : Writ Petition (MD) No. 5031 of 2007

K. Jayantha Kumar APPELLANT

Vs

The Joint Secretary to Government and Others RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0141

Hon'ble Judges : V.M. Velumani, J.

Bench : Single Bench

Advocate : K. Rajkumar, for the Appellant; M. Murugan, Government Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V.M. Velumani, J.—This Writ Petition has been filed to quash the proceedings of the Joint Secretary to Government, Health and Family Welfare Department, the first respondent herein, made in Government Letter No. 5510/C2/2000/8, dated 21.05.2001, communicated by the Public Analyst, Food Analysis Laboratory, Palayamkottai, Tirunelveli District, in Na.Ka.No. 264/A1-2007, dated 09.02.2007, and direct the respondents herein to re- designate the petitioner herein as Electrician, Grade-I in the Tamil Nadu Public Health Subordinate Service with all consequential fixation of pay and allowances in the post of Electrician, Grade-I with effect from 06.04.1988 or in the alternative to fix the scale of pay of the post of the petitioner in the post of Electrician as 610-1075 with effect from the date of his first appointment and re-designate the petitioner as Electrician, Grade-I with effect from the date of first appointment on 06.04.1988 with all consequential fixation of pay and allowances attached to the post awarded from time to time and disburse all the arrears.

2. The petitioner was appointed as Electrician in the Food Analysis Laboratory, Thanjavur, by the proceedings of the Public Analyst, Thanjavur, on 06.04.1988. The petitioner joined the said post on 07.04.1988. The post of Electrician is governed by the ad -hoc Rule issued in G.O.(Ms)No. 1287, Health and Family

Planning Department, dated 23.05.1975. In terms of the Service Rules, the qualification for the post of Electrician is that, S.S.L.C. with an eligibility for College Course; a pass in Electrician Course (two years) conducted in any one of the I.T.I. in the State; and experience as Electrician for a period of not less than one year. Since the petitioner possessed the qualification under the Rules, he was appointed as Electrician.

3. At the time of appointment, the petitioner''s scale of pay was fixed in the post of Electrician as Rs.555-15-615-20-725-25-970. As per G.O.(Ms)No. 762, Finance (Pay Cell) Department, dated 20.08.1986, the scale of pay of the petitioner in the post of Electrician ought to have been fixed as Rs.610-1075. The third respondent wrongly fixed the petitioner''s scale of pay as Rs.555-970, which is meant for those who have failed in S.S.L.C. together with I.T.I. certificate.

4. Therefore, the petitioner sent a representation to the third respondent to fix proper scale of pay as per G.O.(Ms)No. 762, Finance (Pay Cell) Department, dated 20.08.1986. The third respondent forwarded the representation to the second respondent, who is the competent authority to fix the scale of pay. The third respondent recommended the petitioner''s case and has stated that the petitioner is entitled to the scale of pay of Rs.610-1075.

5. The petitioner sent several reminders to pass orders at the earliest. Finally, the petitioner on 05.02.2007 gave a representation to the second respondent to know about the stage of his representation. The third respondent, by his letter in Na.Ka.No. 264-A1/2007, dated 09.02.2007, enclosing a copy of Govt.Lr.No. 5510/ C2/2000-8, has clarified that the claim of the petitioner for fixation in accordance with G.O. (Ms)No. 762, Finance (Pay Cell) Department, dated 20.08.1986, has been rejected by the Government as early as on 21.05.2001. The first respondent has rejected the claim of the petitioner on erroneous grounds and on misconception. The claim of the petitioner was rejected on the ground that the scale of pay for the post of Electrician was revised as Rs.950-1500, which is a Grade-II post and therefore, it cannot be granted to the petitioner. The first respondent failed to consider the claim of the petitioner based on G.O.(Ms)No. 762, Finance (Pay Cell) Department, dated 20.08.1986 and no reasons were given as to why the said Government Order was not applicable to the petitioner. Hence, the petitioner has filed the present writ petition for the relief stated supra.

6. The first respondent has filed counter affidavit stating that the petitioner''s pay was properly fixed at Rs.555-970 at the time of his appointment i.e., 06.04.1988. The scale of pay sanctioned by the Government to the post of Electrician from time to time, as follows:

7. The scale of pay of Electrician was fixed by One Man Committee in 1992 as Rs.950-1500 with effect from 01.06.1988 with monetary benefit from 01.04.1992 as per G.O.(Ms)No. 550, Finance (Pay Cell) Department, dated 01.06.1992. The petitioner has drawn the pay in the pre-revised scale of pay of

Rs.555-970 for the period from 07.04.1988 to 31.05.1988.

8. The petitioner''s representation was forwarded to the first respondent through the second respondent. After careful consideration, the request of the petitioner was rejected by the first respondent in Letter No. 5510/C2/2000, Health and Family Welfare Department, dated 21.05.2001, on the ground that once the anomaly pointed out is rectified on the recommendation of the Official Committee or the One Man Commission, the said revision cannot be given with retrospective effect and the same was informed to the petitioner on 06.07.2001.

9. By G.O.(Ms)No. 762, Finance (Pay Cell) Department, dated 20.08.1986, scale of pay for the post of Electrician was not revised. Orders were issued in the said Government Order to the effect that classifying the various trade posts into two groups with suitable pay scales and did not revise the scale of pay for the post of Electrician (entry level) in the Public Health and Preventive Medicine Department, as contended by the petitioner. As per recommendation of the Official Committee, the scale of pay for various Grade-II Trade posts at entry level was revised from Rs.555-970 to Rs.950-1500 notionally with effect from 01.06.1988 with monetary benefit from 01.04.1992. Necessary orders were issued in G.O.(Ms)No. 550, Finance (Pay Cell) Department, dated 01.08.1992.

10. The allegation of the petitioner that he gave a representation immediately to the third respondent, is denied. He made a representation only on 21.12.1998 to the third respondent. The said representation was considered on merits and rejected on the ground that once the anomaly is rectified, the same cannot be given retrospective effect. The petitioner received the rejection order dated 21.05.2001, on 06.07.2001. Therefore, the respondents prayed for dismissal of the writ petition on the ground that the scale of pay of the petitioner was properly fixed and the petitioner is not entitled to revision of pay with retrospective effect.

11. The petitioner filed re-joinder denying the allegations made in the counter affidavit. The petitioner reiterated the averments made in the affidavit. The Government Order in G.O.(Ms)No. 550, Finance Department, dated 01.08.1992 and G.O.(Ms)No. 1849, Health Indian Medicine and Homoeopathy and Family Welfare Department, dated 21.09.1988, mentioned in the re-joinder are not applicable to the case of the petitioner. As per G.O.(Ms)No. 762, Finance (Pay Cell) Department, dated 20.08.1986, the petitioner has accrued interest and it cannot be denied to him.

12. I have perused the materials on record and heard the learned counsel appearing for the parties and considered the arguments put forth by them.

13. In support of his submission, the learned counsel for the petitioner relied on the following Judgments:

(i) M.R. Gupta Vs. Union of India and others, , wherein in paragraphs 5 and 6, it has been held as follows:

"5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant''s grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant''s claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant''s claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant''s claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Others vs. Mattapalli Raju1950 (52) BOMLR 181 (Federal Court) ."

(ii) J.S. Yadav Vs. State of U.P. and Another, , wherein in paragraphs 20 to 22, it has been held as follows:-

"20. "17. The word ''vested'' is defined in Black''s Law Dictionary (6th Edn.) at p. 1563, as:

''Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.''

Rights are ''vested'' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster''s Comprehensive Dictionary (International Edn.) at p. 1397, ''vested'' is defined as:

''[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.''"

(See Masammat Bibi Sayeeda and Others etc. Vs. State of Bihar and Others,

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property, etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide Howrah Municipal Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others,   .

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course."

(iii) The Director, Commissioner of Collegiate Education, Chennai and Others Vs. Nelson Junior Mechanic, Scott Christian College, Nager coil and another [2004 (1) MLJ 53], wherein in paragraphs 16 and 17, it has been held as follows:

"16. In the light of the discussions held above and also considering the various Government Orders and the proceedings of the Director of Collegiate Education and the Deputy Collector of Collegiate Education, we are not inclined to allow this appeal.

17. As pointed out by the learned Single Judge of this Court that there should not be any discrimination with regard to status of the technicians working in Government Colleges and in the private colleges."

(iv) The order passed by this Court in P. Nelson Vs. The Director/Commissioner of Collegiate Education, College Road, Nungambakkam, Chennai and others [W.P.No. 18963 of 1996 , dated 21.06.2001], which was confirmed by the Division Bench of this Court in the Judgment reported in 2004 (1) MLJ 53 [cited supra].

(v) The orders passed by this Court in C. Mani Vs. The Government of Tamil Nadu, Rep. by its Secretary to Government, Higher Education Department, Fort St. George, Chennai and others [W.P.No. 38251 of 2004 , dated 22.12.2004]; and G. Sivasankar Vs . The Government of Tamil Nadu, Rep. by its Secretary to

Government, Higher Education Department, Fort St. George, Chennai and others [W.P.(MD)No. 3931 of 2005 etc. batch, dated 18.07.2006], which were allowed following the Judgment of the Division Bench of this Court, reported in 2004 (1) MLJ 53 [cited supra].

14. The petitioner has claimed fixation of scale of pay as Rs. 610-1075 based on G.O.(Ms)No. 762, Finance (Pay Cell) Department, dated 20.08.1986. By the said Government Order, the scale of pay for the post of Electrician was classified and the pay scale was revised. The scale of pay for the post of Electrician, who have passed S.S.L.C. and I.T.I. two years course certificate, is Rs.610-1075 and those who have failed S.S.L.C, the scale of pay is Rs.555-970. On the other hand, the first respondent contended that by the said Government Order, the scale of pay was not revised, but the post was only reclassified. The said contention is untenable and unsustainable.

15. A reading of G.O.(Ms)No. 762, Finance (Pay Cell) Department, dated 20.08.1986, clearly reveals that the post of Electrician was not only classified, but also the scale of pay was revised. The relevant portion of the said Government Order reads as follows:-

"4. Based on the recommendations of One Man Committee separate orders were issued prescribing revised scales of pay for various trade posts in certain departments. Wherever the prescribed qualification for trade posts in their department is I.T.I. and the present scales of pay are lower than the pay scales indicated in Annexure to these orders Heads of Dept., concerned are requested to send necessary proposals for revision of pay scales of such posts."

16. This Court, considered the similar issue in case of a person working as Mechanic and by order, dated 18.09.2009, in W.P.(MD)No. 3931 of 2005 etc. batch, directed to fix the scale of pay on his initial appointment and to grant consequential revisions thereon and thereafter, to pay the arrears. The relevant portion of the said order reads as follows:-

"7. The case of the petitioners is that, in spite of the said categorical dictum laid down by the Division Bench and it has become final, they are not considered for relaxation of the qualification for the next avenue of promotion viz., Mechanic Grade I.

11. In the result, the writ petitions stand allowed in terms of the decision of the Division Bench reported in 2004 (1) MLJ 5 3. The first respondent is directed to pass necessary orders within a period of eight weeks from the date of receipt of a copy of this order and also confer all monetary and consequential benefits. No costs."

17. As per G.O.(Ms)No. 762, Finance (Pay Cell) Department, dated 20.08.1986, the scale of pay for the post of Electrician was revised and a candidate with S.S.L.C. pass and I.T.I. qualification, is entitled to the scale of pay of Rs.610-1075. The petitioner satisfies the qualifications and hence, entitled to the

scale of pay of Rs.610-1075.

18. The first respondent has stated that the request of the petitioner was rejected by the impugned order, dated 21.05.2001 and informed to the petitioner on 06.07.2001. The petitioner did not take any action till filing of the writ petition in the year 2007. In the Judgment reported in M.R. Gupta Vs. Union of India and others, , the Hon''ble Apex Court has held that fixation of wrong scale of pay is a continuing wrong giving rise to a recurring cause of action every month on the occasion of payment of salary. The contention of the first respondent that the petitioner is not entitled to retrospective re-fixation, since the petitioner filed the writ petition in the year 2007, while the order was passed on 21.05.2001, which is not sustainable in view of the above referred Judgments.

19. In the result, the petitioner is entitled to re-fixation of scale of pay. The first respondent is directed to grant the scale of pay of Rs. 610-1075 from the date of the petitioner''s initial appointment and fix him at Rs.610/- and grant consequential revision and thereafter, calculate all the arrears, within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No Costs.