

(2014) 04 MAD CK 0248

In the Madras High Court

Case No : W.P. No. 11851 of 2012 and M.P. No. 1 of 2012

K. Syed Razack

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Citation : (2014) 2 SCT 723

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The petitioner was appointed as Grade II Police Constable on 01.06.1971. He was promoted as Grade I Police Constable on 28.01.1972. He was further promoted as Head Constable on 06.03.1981. He was included in the "C" list of Head Constables fit for promotion to the post of Sub-Inspector of Police on 22.09.1985. Due to non-availability of vacancy, he was not promoted at that time. Later, he was promoted temporarily as Sub-Inspector of Police on 15.09.1987 and he was also paid salary accordingly by fixing his pay to the post of Sub-Inspector of Police and also giving the benefit under FR 22(B). Later, he was regularised in the post of Sub-Inspector of Police, with effect from 07.08.1992. Thereafter, he was promoted as Inspector of Police on 15.10.2003. He retired from service on 31.01.2009 on reaching the age of superannuation. While so, pension proposals were sent by the Department to the fourth respondent. The fourth respondent opined that the benefit of fixation under FR 22(B) was given from 15.09.1987 and it should be given only from 07.08.1992, that is, on regularisation of service as Sub-Inspector of Police and returned the pension proposals to the Department.

2. In these circumstances, the Joint Commissioner of Police, (Head Quarters) Egmore, Chennai, passed an order dated 08.06.2009 to recover a sum of Rs. 36,312/- from the DCRG of the petitioner, towards the alleged excess payment due to the aforesaid fixation.

3. The said order of recovery dated 08.06.2009 was challenged before this Court in W.P. No. 16267 of 2009 and this Court allowed the writ petition on 08.11.2010 on the simple ground that no notice was given to the petitioner and the petitioner was not heard before passing the order of recovery.

4. Thereafter, a show cause notice dated 11.05.2011 was issued to the petitioner by the Additional Commissioner of Police (Crime & Head Quarters). Para 6 of the show cause notice is extracted hereunder:

6. In this connection you are informed that your services have been regularized in the post of Sub-Inspector of Police with effect from 07.08.1992 only and hence you are eligible to get the fixation benefit under FR 22(B) with effect from 07.08.1992 only and not from 01.07.1987 based on your temporary promotion as Sub-Inspector of Police according to the (clarification) orders of FRs. It is therefore decided to re-fix your pay as advised by the Accountant General in his letter No. P05/S507/AR/2008-2009/528, dated 18.02.2009 and to recover OD pay and allowances from your DCRG with held.

5. The petitioner gave his explanation on 10.06.2011 stating that there is nothing wrong in fixation of pay of the Sub-Inspector of Police, when he assumed office on 15.09.1987. She said fixation was made by the Department on its own volition and it was not due to any misrepresentation from the petitioner. Therefore, even assuming that if any excess amount is paid, the same cannot be recovered after 17 years, that too after retirement. However, the impugned order dated 10.02.2012 was passed by the second respondent, to recover a sum of Rs. 36,312/- from the DCRG of the petitioner. Hence, the petitioner has filed the present writ petition.

6. The third and the fourth respondents filed counter affidavits.

7. Heard both sides. With the consent of both parties, the writ petition itself is taken up for final disposal, as counter affidavits of the other respondents are not necessary and a comprehensive counter affidavit is filed by the third respondent.

8. According to the learned counsel for the petitioner, there was no wrong fixation of pay and the petitioner is entitled to the fixation of pay for the promoted post of Sub-Inspector of Police from 15.09.1987. The fixation of pay for the post of Sub-Inspector of Police could not be given from 07.08.1992, that is from the date of regularization, since he was holding the post of Sub-Inspector of Police from 15.09.1987 and that too, after being empanelled in the "C" list as early as on 22.09.1985.

9. In any event, the learned counsel for the petitioner has vehemently contended that if there is any excess payment made and that was not due to any misrepresentation made by the petitioner, the same cannot be recovered, that too after 17 years of such fixation and that too after retirement.

10. In support of his contention, learned counsel for the petitioner has relied on a decision of a Division Bench of this Court in D. Palavesamuthu Vs. The Tamil

Nadu Administrative Tribunal, .

11. The learned counsel for the petitioner has also brought to my notice para (v) of the counter affidavit filed by the third respondent, wherein it is stated that they could order further recovery of the alleged excess payment from 30.10.2003 to 31.01.2009, besides the recovery of Rs. 36,312/- for the period from 15.09.1987 to 07.08.1992. The learned counsel has further submitted that he is not able to understand as to how the third respondent has stated that excess payment was made for the period from 30.10.2003 to 31.01.2009 and in any event, no such recovery could be made, at this distance point of time.

12. On the other hand, the learned Government Advocate has submitted that it was a wrong fixation and therefore, the same could be recovered.

13. I have considered the submissions made on either side and perused the materials available on record.

14. It is well settled by a catena of decision that if excess pay was granted, not due to any misrepresentation by the petitioner, but due to the mistake committed by the Department, the excess pay shall not be recovered from the employee, from the retiral benefits, that too after retirement.

15. As rightly contended by the learned counsel for the petitioner, a Division Bench of this Court in D. Palavesamuthu Vs. The Tamil Nadu Administrative Tribunal, has held that such recovery is bad and the relevant passage found in para 6 of the said judgment is extracted here-under:

6. ...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 penalised after a lapse of number of years that too after retirement of the petitioner.

16. I am also of the view that the above said judgment squarely applies to the facts of this case. Any wrong fixation that was said to have been made in 1987, shall not be sought to be recovered, after retirement in 2009, more particularly, when it is not the case of the respondents that the wrong fixation was done at the instance of the petitioner by way of misrepresentation. In fact, it is strongly opposed by the learned counsel for the petitioner that since the petitioner was promoted as Sub-Inspector of Police temporarily on 15.09.1987, he is entitled to the pay of Sub-Inspector of Police, and when he was subsequently regularised, there is nothing wrong in higher fixation of pay in the year 1987 itself. I am not going into that issue. Even if there is any error, the petitioner cannot be made to suffer after retirement, by way of recovery. For the foregoing reasons, the impugned order is quashed and the writ petition is allowed. The respondents are directed not to make any recovery on the ground of any wrong fixation done during the service, as it was not the mistake of the petitioner. The respondents

are further directed to refund the amount, if any already recovered from the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.