

(2011) 12 MAD CK 0205
In the Madras High Court
Case No : W.P.No. 4475 of 2007

M. Ramamurthy

APPELLANT

Vs

The Inspector General of Prisons, 807, Anna Salai, Second Floor, Chennai 600002 and The Superintendent, Central Prison, Salem 7

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Citation : (2011) 12 MAD CK 0205

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : K. V. Srinivasaraghavn, for the Appellant; V. Subbiah Special Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice D. Hariparanthaman

1. The petitioner was appointed as II Grade Warder on 26.11.1960 and his service was regularised with effect from 01.6.1962. His educational qualification was 5th Form failed.
2. The petitioner was temporarily promoted as Chief Head Warder and posted at Special Sub Jail, Salem as per Proceedings No. 54171/B4/75, dated 04.12.1975 of the first respondent, Inspector of General of Prisons.
3. On 20.05.1981, further, the petitioner was temporarily promoted as Assistant Jailor and posted at Sub Jail, Poonamallee as per the proceedings No. 12683/B4/81, dated 09.05.1981 of the first respondent, Inspector General of Prisons.
4. Later, the second respondent sought to revert the petitioner to the original post on the ground that the petitioner did not possess requisite educational qualification either for the post of Chief Head Warder or Assistant Jailor. There were various proceedings initiated by the petitioner in the Court of law against

the order of reversion and he obtained an interim order. 3

5. In view of the interim order obtained by the petitioner, he continued as Assistant Jailor. While so, he permitted to retire voluntarily with effect from 1.4.2001.

6. In such circumstances, after the petitioner was permitted to retire voluntarily, the second respondent passed an order dated 20.6.2001 refixing the pay of the petitioner in the post of Chief Head Warder and Assistant Jailor. The said order was passed based on the order dated 5.2.2001 of the first respondent, Inspector General of Prisons herein stating that the petitioner was fixed at higher level of pay in the post of Chief Head Warder/Assistant Jailor and therefore, refixation has to be done and recovery of the difference amount should be made from D.C.R.G.

7. After refixation of pay by the order dated 20.6.2001, the second respondent passed the impugned order dated 30.7.2001 for recovery of a sum of Rs. 83,540/- from D.C.R.G.

8. Hence, the petitioner filed Original Application 4 No. 6107 of 2001 (W.P.No. 4475 of 2007) to quash the order dated 30.7.2001 of the second respondent seeking recovery of Rs. 83,540/- from D.C.R.G.

9. While admitting the Original Application No. 6107 of 2001, the Tamil Nadu Administrative Tribunal granted interim stay on 19.9.2001 for the order of recovery. On abolition of the Tribunal, the said Original Application No. 6107 of 2001 was transferred to this Court and renumbered as writ petition No. 4475 of 2007.

10. The second respondent filed the reply affidavit on behalf of the first respondent also refuting the allegations.

11. I have heard the submissions made by the learned counsel for the petitioner as well as the learned Special Government Pleader for the respondents.

12. The aforesaid narration of facts is not in dispute. The petitioner was promoted as Chief Head Warder in 1975 and thereafter, he was temporarily promoted as Assistant Jailor in the year 1981. He was permitted to retire 5 voluntarily with effect from 1.4.2001. After the retirement, the first respondent came to the conclusion that the higher pay was fixed in the post of Chief Head Warder/Assistant Jailor, twenty five years back and sought to recover the excess payment.

13. It is not the case of the respondents that the higher pay fixation was made due to any misrepresentation by the petitioner. If the higher pay was paid not due to any misrepresentation, the respondents could not recover the excess payment if any made.

14. Further more, the Division Bench of this Court in D. Palavesamuthu Vs. The Tamil Nadu Administrative Tribunal, held that if the refixation 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 penalised after a lapse of number of years that too after retirement of the petitioner.

15. In view of the aforesaid reasons, the impugned order dated 30.07.2001 of the second respondent is liable to be quashed and accordingly, the same is quashed.

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