

(2013) 09 MAD CK 0229

In the Madras High Court

Case No : Writ Petition No. 214 of 2007 (O.A.No. 7457 of 2001)

R. Arumugham

APPELLANT

Vs

The Additional Assistant Elementary Educational Officer, The
Sub-Treasury Officer, Omalur, The Treasury Officer, Salem
and The Accountant General, Chennai

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0229

Hon'ble Judges : K. Ravichandrababu, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; R. Rajeswaran for R1 to R3, Special
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandrababu, J.—The present writ petition is the transferred O.A.No. 7457 of 2001 filed on behalf of the Tamilnadu Administrative Tribunal challenging the order of the first respondent dated 16.11.2001. Through the said impugned order, the first respondent directed recovery of a sum of Rs. 12,624/- from the petitioner alleging that the said amount is an excess amount paid to the petitioner from 01.09.1998 to May 2001. The case of the petitioner is that he was appointed as Secondary Grade Teacher on 13.12.1962 and later, promoted as Headmaster on 01.06.1966. After rendering more than 38 years of service, he retired on 30.06.2000. The Government issued G.O.Ms.No. 562 Finance (Pay Cell) Department dated 28.09.1998 and ordered that persons stagnating in a post beyond 30 years i.e. employees stagnating in the Special Grade more than 10 years be granted one bonus increment as an incentive. The petitioner had completed more than 30 years of service in the same post and completed 10 years in the Special Grade and therefore, he had full-filled the criteria for eligibility for one bonus increment as contemplated under G.O.Ms.No. 562. Accordingly, the first respondent by his proceedings dated 26.03.1999,

sanctioned the bonus increment to the petitioner with effect from 01.09.1998 and the petitioner was drawing the increased pay till his retirement.

However, to his utter shock and surprise, the first respondent passed the present impugned order directing recovery of Rs. 12,624/- being the excess pay drawn by him from 01.09.1998 to May 2001. This order came to be passed by the first respondent based on an audit objection.

2. It is the contention of the petitioner that before issuing the said order, no notice was issued to him. Therefore, it violates the principles of natural justice. Apart from that, it is further contended by the petitioner that he is fully qualified to receive the bonus as per G.O.Ms.No. 562 Finance (Pay Cell) Department dated 28.09.1998, as he was admittedly in the stagnated post for 30 years.

3. The respondents filed a counter affidavit wherein they admitted that the petitioner was appointed as Secondary Grade Teacher on 13.12.1962 and later on, promoted as Headmaster on 01.06.1966 and further admitted that the petitioner retired on 30.06.2000 and reemployed from 01.07.2000 to 31.05.2001. It is further stated in the counter that the petitioner was given bonus increment with effect from 01.09.1998 and after drawing the increased pay, the petitioner retired on 30.06.2000. However, it is stated in the counter that the real facts would show that the petitioner is not entitled to get the bonus increment as per G.O.Ms.No. 562 dated 28.09.1998. By oversight, the petitioner was given such increment. As the Audit objection was made, the impugned order was passed. It is further admitted in the counter that the respondent had not sent any notice to the petitioner before passing the impugned order.

4. Heard the learned counsels appearing on either side.

5. The grievance of the petitioner is that having granted the benefit of bonus increment as per G.O.Ms.No. 562 dated 28.09.1998, the impugned order for recovery cannot be passed without assigning any reason, that too, without affording an opportunity of hearing before passing such order.

6. Admittedly, in this case, the respondents granted the benefit to the petitioner as per G.O.Ms.No. 562. A perusal of the said G.O. would show that the Government ordered to pay one bonus increment to the employees stagnating in a post beyond 30 years i.e., employees stagnated in the Special Grade beyond 10 years, as an incentive. In pursuant to the said G.O., the Assistant Elementary Educational Officer of the Omalur issued a proceedings on 26.03.1999 by specifically stating that the petitioner was working as Headmaster from 01.06.1966 for 30 years and therefore, he was granted one bonus increment with effect from 01.09.1998. When both these proceedings are read together, I find that there could be no reason for denying the said benefit to the petitioner. In any event, when the impugned order was passed, it does not disclose the reason for denying the benefit to the petitioner and consequently, for ordering recovery. Except saying that there was an audit objection, the impugned order did not state the reason. Even the counter filed by the respondents also silent

about the reason based on which the recovery order came to be passed. Except saying that the real facts would disclose that the petitioner is not entitled to get the bonus, what are those real facts are not stated by the respondents. On the other hand, it is their case that by oversight, the petitioner was given the bonus. I am unable to appreciate the stand taken by the respondents. The petitioner got the benefit in pursuant to the G.O.Ms.No. 562. Consequently, proceedings were issued by the Assistant Elementary Educational Officer. In both these proceedings, the actual requirement was clearly spelt out and in fact, in the second proceedings, the Authority has clearly found that the petitioner is entitled to get the benefit. Therefore, there could not be any other valid reason for denying the benefit to the petitioner. Above all, the petitioner was not put on notice before passing the impugned order. Therefore, the impugned order also violates the principles of natural justice. Considering all these facts and circumstances, I am of the view that the order impugned in this writ petition cannot be sustained and accordingly, the same is set aside. Consequently, the respondents are directed to disburse any other pensionary benefits withheld in pursuant to the impugned order, to the petitioner within a period of 12 weeks. The writ petition is allowed. No costs.