

Madras High Court
R. S. Desikan vs The Regional Joint Director Of on 11 August, 2011
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11/08/2011

Coram

THE HONOURABLE MR. JUSTICE VINOD K. SHARMA

Writ Petition(MD)No.8305 of 2007

R. S. Desikan,

(P.P.O.No. A86768),

Room No.1, Muthuselvi Complex,

Vilachery Road, Thirunagar,

Madurai - 625 006. Petitioner

Vs

1. The Regional Joint Director of

Treasuries & Accounts,

Madurai - 625 002.

2. The Special Commissioner and

Commissioner of Treasuries and Accounts,

Panakal Building,

Chennai - 600 015.

3. The Secretary,

Finance Pension Department,

Government of Tamil Nadu,

Fort. St. George, Chennai - 600 009..... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the third respondent's Letter No.59033/PC/99-1 dated 03.10.1999 and subsequent orders of the first respondent's Letter L.Dis.8708/2003/A dated 01.12.2003 and again confirmed by the second respondent in his Ref.Oo.Mu/Lr.No.43343/2005/ Ou.2 dated 12.09.2005 to quash the same and consequently direct the respondents to restore the pension @ Rs.3,250/- per month and to direct the respondents to refund the recovered sum of Rs.20,004/- from the petitioner's pension.

!For Petitioner ... Mr. R. Thangasamy

^For Respondents... Mr. D. Muruganandam

Additional Government Pleader

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:ORDER

The petitioner prays for issuance of a Writ, in the nature of Mandamus, to challenge the order dated 03.10.1999, and subsequent orders of the first respondent in L.Dis.8708/2003/A dated 01.12.2003.

2. The petitioner retired on 31.10.1970, at the age of 55 years, on attaining superannuation, while working as Sub Treasury Officer Grade I at Madurai. The scale of pay, at the time of retirement of the petitioner, was Rs.250-15-400. The pay scale of Sub Treasury Officer was revised to Rs.1820-60- 2300-75-3200 in the year 1992.

3. The case of the petitioner, is that the Government of Tamil Nadu, vide G.O.Ms.No.580 Finance (Pay Cell) Department dated 01.08.1992, upgraded the post of Sub Treasury Officer, as Assistant Treasury Officer, and fixed the scale of pay of Rs.2000 - 3200, with retrospective effect from 01.06.1988.

4. The Sixth Pay Commission revised scale of pay of Sub Treasury Officer Grade I, upgraded as Assistant Treasury Officer to Rs. 6500-200-10500.

5. The Government of India revised the pension, and family pension with effect from 01.01.1996, for those who retired prior to the said date, to be at par the person retiring upto 01.01.1996, providing that the employees should be granted 50% of the minimum of the revised scale of pay introduced with effect from 01.01.1996, for the post held by the employee at the time of retirement.

6. This benefit was extended, to the retired employees of the Tamil Nadu Government, vide G.O.Ms.No.200 Finance (Pay Cell) Department dated 18.05.1999.

7. In pursuance to the revision of Pension by the State Government, the Treasury Officer, Madurai fixed the pension of the petitioner at Rs.3,250/- (Rupees Three Thousand Two Hundred and Fifty Only), in the scale of pay Rs. 6500-200-10500, which was applicable to the Assistant Treasury Officer with effect from 01.06.1988.

8. The case of the petitioner, is that the revision of pension of the petitioner was in consonance with G.O.Ms.No.200 Finance (Pay Cell) Department dated 18.05.1999. The petitioner continued to receive the pension of Rs. 3,250/- (Rupees Three Thousand Two Hundred and Fifty Only) per month from 01.04.1999 till 28.02.2003.

9. The petitioner was informed, vide letter dated 01.12.2003, that there was audit objection, and accordingly, his pension was re-fixed at Rs.2,950/- (Rupees Two Thousand Nine Hundred and Fifty Only) instead of Rs. 3,250/- (Rupees Three Thousand Two Hundred and Fifty Only). Recovery order of Rs.20,004/- (Rupees Twenty Thousand and four only) was also issued.

10. The petitioner filed representations against the order. However, the same were not entertained. The representation made by the petitioner, to the Hon'ble Chief Minister, was referred to the Department, and it was finally on 12.09.2005, that the representation made by the petitioner was rejected.

11. The respondents, in the meantime, effected the recovery of Rs.20,004/- (Rupees Twenty Thousand and four only), against which, the petitioner made representation, which is yet to be decided.

12. The contention of the learned counsel for the petitioner, is that the benefit granted under G.O.Ms.No. 200 Finance (Pay Cell) Department dated 18.05.1999, cannot be taken away by way of clarification vide letter dated 03.10.1999, by the Joint Secretary to the Government.

13. The contention, is therefore, that by way of executive instruction, statutory rule cannot be modified or altered. The impugned order therefore cannot be sustained in law.

14. The second ground of challenge, is that the impugned order has been passed, without following the principle of natural justice, thus cannot be sustained.

15. The writ petition is opposed by the State by contending, that in pursuance to the letter dated 11.05.2001, wherein clarification has been issued, pointing out that the Fifth Tamil Nadu Pay Commission had recommended the revised scale of pay of Rs.1640-2900 for the post of Sub Treasury Officer, Grade I, which was subsequently revised to Rs.1820-3200. Therefore, the corresponding revised scale of pay for the post of Sub Treasury Officers Grade I with effect from 01.01.1996 is Rs.5900-9900 and not 6500-200-10,500/-.

16. The learned counsel for the petitioner, is right, in contending, that the clarification given is misconceived, being based on wrong fact. The Department, while giving the clarification has taken note of the pay scale of Rs.1820-3200, which did not exist, after anomaly was removed, and the scale was revised to Rs.2000-3200/-. The basis of the clarificatory letter, therefore, is non-existence, and cannot be sustained.

17. There is also force in the contention of the learned counsel that the impugned order suffers from the vice, of non compliance of principle of natural justice. It is well settled law, that an order affecting civil rights, cannot be passed, without giving opportunity of hearing.

18. There was no occasion for the respondents, to effect any recovery, as it is also equally well established, that the benefit granted to an employee, cannot be withdrawn retrospectively, and no recovery can be effected unless and until, it is shown that the employee was guilty of fraud or mis- representation in getting the benefit. There are no such allegation against the petitioner.

19. For the reasons stated above, the impugned order cannot be sustained.

20. Consequently, this writ petition is allowed and the impugned order is set aside, and a writ in the nature of Mandamus is issued, directing the respondents to refund the amount, wrongly deducted from the petitioner. No costs.

Dpn/-

To:

1. The Regional Joint Director of

Treasuries & Accounts,

Madurai - 625 002.

2. The Special Commissioner and

Commissioner of Treasuries and Accounts,

Panakal Building,

Chennai - 600 015.

3. The Secretary,

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