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W.P.No. 10283 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 10283 of 2019

and

W.M.P.No. 10833 of 2019

V. Parvathy

... Petitioner

Vs.

1. The Commissioner of Social Welfare,
Directorate of Social Welfare,
Chennai – 600032.

2. The Joint Director,
Directorate of Social Welfare,
Chennai.

3. The District Social Welfare Officer,
Dharmapuri.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to proceedings bearing Proceeding No. Aa.Mu.Sa.Ku. No. 1873/Nir/6(1) 2019 dated 22.02.2019 as arbitrary, contrary to law and in violation of principles of natural justice for refixation of scale of pay from 17.03.1986 and for recovery of the amount and quash the same with further direction to the respondents for granting selection grade and special grade pay to the petitioner with effect from 01.04.2006.

For Petitioner

: Mr. V. Parthiban

for Mr. R. Tholgappian

For Respondents

: Mrs. S. Anitha

Special Government Pleader

for R1 to R3



ORDER

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The order of recovery, to recover the excess pay granted to the writ petitioner, with reference to the selection grade and special grade pay, is under challenge in the present writ petition.

2. The petitioner states that she was appointed as Tailoring Instructress Grade II, in the time scale of pay and subsequently her services were regularized. The petitioner was granted time scale of pay and on completion of ten years Selection Grade was awarded to the petitioner. On completion of twenty years, Special Grade was also granted to the writ petitioner. Accordingly, the pay of the petitioner was fixed in accordance with the pay rolls in force. There is no misrepresentation or otherwise on the part of the writ petitioner and the respondent fixed the scale of pay with reference to the service record of the writ petitioner and therefore, the writ petitioner cannot be faulted in respect of the wrong fixation of pay during the relevant point of time or while granting selection grade or special grade.

3. There was an audit objection with reference to the fixation of pay made pursuant to award of Selection Grade or Special Grade to the writ



petitioner, based on the audit objection, impugned order was quashed.

Before passing the impugned order, the petitioner filed W.P. 33983 of 2018, with a prayer to direct the respondents to consider the representation submitted by the writ petitioner. This court, passed an order on 21.12.2018, directing the authorities to pass final orders on the representation submitted by the writ petitioner. Accordingly, the order impugned was quashed. The petitioner was allowed to retire from service on 30.04.2020 and now her pensionary benefits are yet to be settled. There was no misrepresentation or otherwise on the part of the writ petitioner and therefore the respondents are empowered to correct the errors in fixation of pay. However, excess salary paid to the writ petitioner cannot be recovered. Now, at this length of time, the petitioner being a pensioner, if excess salary paid is recovered, the same will result in hardship and therefore, this Court is of the opinion that the error in the fixation of pay is to be corrected but the excess salary already paid cannot be recovered.

4. In view of the facts and circumstances, the respondents are directed to verify the correctness of the fixation of pay and accordingly fix the pay applicable to the writ petitioner and calculate the pensionary benefits and disburse the same as expeditiously as possible to the writ petitioner.



However, the excess salary already paid to the writ petitioner cannot be recovered. To that extent, the order impugned passed by the first respondent in proceedings No. Aa.Mu.Sa.Ku.No. 1873/Nir/6(1)2019 dated 22.02.2019, is quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.10.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order

To

1. The Commissioner of Social Welfare,
Directorate of Social Welfare,
Chennai – 600032.
2. The Joint Director,
Directorate of Social Welfare,
Chennai.
3. The District Social Welfare Officer,
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S.M.SUBRAMANIAM, J.

mrn

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