



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.30821 of 2018
and
W.M.P.No.35970 of 2018

A.Chandrasekaran

...Petitioner

Vs

1. The State of Tamil Nadu represented by,
The Principal Secretary to Government,
Finance Department,
Secretariat, Chennai-9.
2. The Additional Director General of Police/
Inspector General of Prisons,
Whannels Road,
Egmore, Chennai-8.
3. The Superintendent of Prisons,
Central Prison,
Coimbatore-18.
4. The Accountant General (A&E)
Tamil Nadu,
361, Anna salai,
Chennai-18.
5. The Treasury Officer,
District Treasury,
Coimbatore.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of writ and calling for the records leading to the Memo No.16678/IA3/2016, dated 10.7.2018 issued by the 2nd Respondent and consequential orders issued in Proceedings No.5339/MA1/2016, dated 28.7.2018 issued by the 3rd Respondent and quash the same and direct the 3rd Respondent to settle the Pension and Pensionary benefits in accordance with rules.



WEB COPY

For Petitioner : M/S.D.Sivaraam

For R1, R3 & R5 : Mr.C.Selvaraj
Additional Government Pleader

For R4 : No appearance

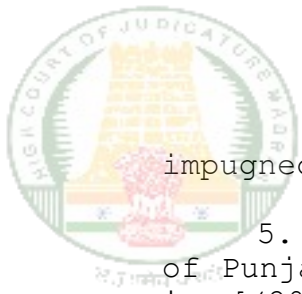
O R D E R

The petitioner herein, who was serving as a Weaving Jobber Grade II in Central Prison, Coimbatore, retired from the services on 28.02.2018. Admittedly, the post of Weaving Jobber is a Grade C post.

2. After retirement, there was an audit objection raised, stating that the scale of pay for selection grade in the Weaving Jobber was wrongly fixed, based on which, the 3rd respondent herein had issued the present impugned order directing for recovery of the excess pay drawn, pursuant to refixation of the pay from 01.04.2013 and 28.02.2018. Aggrieved against such a proposal, the present Writ Petition has been filed.

3. The impugned order of the 3rd respondent herein cannot be sustained for two reasons. Firstly, as rightly pointed by the learned Counsel for the petitioner, the Government in its Letter No.39233/Pri.II/2018-5, dated 30.01.2019, had stated that the pay of the Skilled Assistant Grade II may be fixed, as per the orders issued in G.O.(MS).No.325, dated 22.07.2013 and accordingly had proposed for amending the relevant Service Rules. Pursuant to the Government letter, the Director General of Police had also issued a Circular, stating that, in view of the Government's clarification, the pending audit paragraphs relating to the aforesaid pay fixations may be dropped on receipt of the Circular. However, contrary to the Circular of the Director General of Police, Superintendent of Prisons have now filed a counter affidavit stating that, since the Tamil Nadu Jail Sub-ordinate Service Rules has not been amended as per the Government order, the petitioner will not be entitled for the revision as claimed by him.

4. I'm not in agreement for such a statement made by the 3rd respondent. The Circular of the Director General of Police would be binding on the 3rd respondent, who is Sub-ordinate to him and therefore requires to be meticulously followed. There is no justification on the part of the 3rd respondent in stating that, eventhough, the Director General of Police has issued Circulars to drop all further proceedings pursuant to the audit objections, he will comply with the same only after the concerned Service Rules are amended. On this ground, the



impugned order requires interference.

5. Secondly, the Hon'ble Supreme Court in the case of State of Punjab & Ors vs. Rafiq Masih (Whitewasher's case) reported in [(2015) 4 SCC 334] has held that recovery from employee's belonging to Group C or recovery from retired employees is impermissible in law, more so, when the mistake of the alleged excess pay received is not attributable to the employee.

6. The petitioner herein being a pensioner and belonging to Group C post, would have the protection under this decision of the Hon'ble Supreme Court. On this ground also the impugned order cannot be sustained.

7. For all the forgoing reasons, the impugned orders issued by the 3rd Respondent stands quashed. Consequently, there shall be a direction to the 3rd respondent herein to forthwith disburse all the pending retirement and pensionary benefits to the petitioner herein, as expeditiously as possible, in any event, within a period of four (04) weeks from the date of receipt of a copy of this order. This Writ Petition stands allowed, accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gd

To

1. The Principal Secretary to Government,
Finance Department,
Secretariat, Chennai-9.
2. The Additional Director General of Police/
Inspector General of Prisons,
Whannels Road,
Egmore, Chennai-8.
3. The Superintendent of Prisons,
Central Prison,
Coimbatore-18.



4. The Accountant General (A&E)
Tamil Nadu,
361, Anna salai,
Chennai-18.

WEB COPY

5. The Treasury Officer,
District Treasury,
Coimbatore.

+2ccs to M/S.D.Sivaraam, Advocate, S.R.No.1468
+1cc to the Government Pleader, S.R.No.1961

W.P.No.30821 of 2018

RLD[co]
NSK 10/02/2022