



WEB COPY



W.P.No.13987 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.13987 of 2023
and WMP Nos.13631 and 13632 of 2023

S.Vivekanandan

...Petitioner

-Vs-

1. The Director of Fisheries,
Integrated Animal Husbandary & Fisheries Building,
Nandnam,
Chennai-600 035.

2. Principal Accountant General,
Accounts & Entitlement, Tamil Nadu,
361, Annasalai, Teynampet,
Chennai-600 018.

3. Sub-Treasury Officer,
Sub-Treasury,
Poombuhar Road,
Mayiladudurai.

4. Sub-Treasury Officer,
Sub-Treasury,
Solaipuram, Ambasamudram,
Tirunelvli.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent comprised on Orders passed by the 2nd respondent herein vide Order dated 14.08.2020 bearing No.P06/1/10623343 and Letter dated 01.07.2020 baring Lr.No.AG (A&E)/PEN/PO6/10623267/R0623267, and Pension Payment Order dated 22.07,2020 bearing No.Po6/10623267/3/PPO No.R0623267/FIS and quash the same and consequently direct the respondents to fix the petitioner's Pay to his original Last Drawn Pay, that is, Rs.25,800 + Grade Pay Rs.6,600 and calculate the appropriate benefits based on the said Last Drawn Pay and further direct to pay the sum of Rs.5,33,231/-(Rupees Five Lakhs Thirty Three Thousand Two Hundred and Thirty Only), which is wrongly recovered and reduced from the petitioner along with interest.

For Petitioner : Mr.E.Manoharan
for Mr.J.V.Sakthi Balakrishnan

For Respondents : Mr.s.V.Yamuna Devi
Special Government Pleader
For R.1
Mr.V.Vijay Shankar
For R.2
For R.3 – Not ready in Notice
R.4 – No appearance

ORDER

Heard E.Manoharan, learned counsel for the petitioner and Mrs.V.Yamuna Devi, learned Special Government Pleader for the first respondent and Mr.V.Vijay Shankar, learned Standing Counsel for the second respondent.



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2. By placing reliance on G.O.Ms.Nos.71, Finance (Pay Cell) Department, dated 26.02.2011 and G.O.Ms.No.242, Finance (Pay Cell) Department, dated 22.07.2013, the second respondent herein had raised an objection stating that the Inspector of Fisheries Ordinary Grade would be entitled for Grade Pay of Rs.5,100/- only and on promotion as Assistant Director of Fisheries, they would be entitled for a grade pay of Rs.5,400/- and therefore, the pensionary benefits that was being extended to the petitioner herein, was sought to be reviewed and recovery was contemplated through the impugned order dated 14.08.2020 as well as the subsequent alteration in the Pension Payment Order dated 22.07.2020. These two orders are put under challenge in the present writ petition.

3. The sanctity of G.O.Ms.Nos.71, Finance (Pay Cell) Department, dated 26.02.2011 and G.O.Ms.No.242, Finance (Pay Cell) Department, dated 22.07.2013 were put to challenge before this Court and through an order passed by the Hon'ble Division Bench of this Court in W.A.Nos.504 of 2012 etc., batch, both the Government Orders were directed to be kept in abeyance and ultimately, in the order passed in the case of ***Tamil Nadu Rural Development Engineers and***



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Assistant Engineers Association vs Government of Tamil Nadu and Others in

Civil Appeal Nos.10030-10189 of 2017 etc., the aforesaid orders passed by the

Hon'ble Division Bench of this Court were upheld.

4. The second respondent herein, in the counter affidavit filed before this Court, had already admitted this legal position and stated that the restriction of pay band was done inadvertently in the impugned orders and thereby admitted that the petitioner is entitled for pensionary benefits prior to passing of the impugned order. The relevant paragraph in the counter affidavit reads as follows:-

“ 5. It is respectfully submitted that though this Respondent inadvertently restricted the Pay Bands as prescribed in the G.O.242, the operation of which was stayed by the Hon'ble Court, subsequently the same Pay Bands were recommended by the Pay Grievance Redressal Committee 2019 and finalised in the G.O.403 dated 12.11.2020.

Thus after the finality of the prolonged litigations, that went on behind the disputed issue, the post of Inspector of Fisheries and the Assistant Director of Fisheries (the posts held by the petitioner during the



disputed period) were allowed the Pay Bands and the Grade Pay as allowed in G.O.242 and admitted by this Respondent.

Therefore the pensionary benefits admitted by this Respondent is the actual admissible amount due to the petitioner.”

5. In view of clear admission made by the second respondent themselves in the counter affidavit and also by taking note of the fact that the impugned orders in G.O.Ms.Nos.71, Finance (Pay Cell) Department, dated 26.02.2011 and G.O.Ms.No.242, Finance (Pay Cell) Department, dated 22.07.2013 have already been kept in abeyance by the Hon'ble Supreme Court, consequential order seeking for recovery based on the revision made therein cannot be sustained.

6. At this juncture, learned counsel for the petitioner submits that recovery for the period from 2013 to 2017 cannot be sustained, in view of passing of this order and that recovery has already been made.

7. Accordingly, the impugned orders dated 14.08.2020, as well as the subsequent alteration in the Pension Payment Order dated 22.07.2020, are hereby



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quashed. There shall be a direction to the respondents herein to forthwith pass appropriate orders refunding the amount that may have already recovered for the period from 2013 to 2017 to the petitioner herein, within a period of four weeks from the date of receipt of a copy of this order.

8. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes/No
Internet:Yes/No
sr



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M.S.RAMESH,J.,

SR

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