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W.P.No.2396 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

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1. Union of India
represented by its Director General
Prasar Bharati
(Broadcasting Corporation of India)
Section S-II
All India Radio, Parliament Street
New Delhi 110 001
2. The Director (E)
Prasar Bharati
Broadcasting Corporation of India
Doordarshan Kendra
Puducherry
3. The Senior Accounts Officer
Pay & Accounts Office
Doordarshan Kendra
Swami Sivananda Salai
Chennai-5



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4. The Director (Pay)

Ministry of Personnel, Public Grievances

and Pensions

Department of Personnel and Training

Estt.(Pay-I) Section, North Block

New Delhi

.. Petitioners

v.

1. R.Rita

2. The Central Administrative Tribunal

rep.by its Registrar

Madras Bench

Chennai 600 104

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of 2nd respondent and quash the order dated 21.10.2016 in O.A.No.1355 of 2012, as the same is unsustainable.

For Petitioners :: Mr.V.Chandrasekaran
Senior Panel Counsel

For Respondents :: Mr.V.Vijay Shankar for R1
R2-Tribunal

ORDER

(Order of the Court was made by D.KRISHNAKUMAR,J.)

The Union of India represented by its Director General, Prasar



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Bharati and their functionaries have filed this writ petition challenging the order passed by the Central Administrative Tribunal, Madras Bench in O.A.No.1355 of 2012 dated 21.10.2016.

2. The facts giving rise to the present writ petition are that the first respondent herein joined the service in the petitioners Establishment as Lower Division Clerk on 04.06.1984. She was promoted as Upper Division Clerk on 10.01.1991 and her pay was fixed in the pay band of Rs.5200-20200 with Grade Pay of Rs.2400/-. While functioning as such, she made an application under FR 15(a) of the Fundamental Rules before the authority concerned seeking voluntary transfer from Madhya Pradesh station to any of the stations in Tamil Nadu. Accepting her request, the first petitioner passed an order on 09.03.2010 transferring her to the Doordarshan Maintenance Centre at Salem as Lower Division Clerk. The said transfer to the lower post with pay protection under FR 15(a) is not in dispute. Thereafter, by proceedings dated 20.04.2011, on the recommendations of the Departmental Screening Committee, the petitioners have granted the second financial upgradation to the first respondent by fixing her pay in the



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pay scale of PB-2 Rs.9300-34800 with Grade Pay of Rs.4200/- with effect from 04.06.2008 under the Assured Career Progression Scheme. Thereafter, she was again transferred and posted as Lower Division Clerk in the office of the second petitioner at Puducherry on 16.08.2012. While that being so, the second petitioner passed the order dated 26.09.2012 re-fixing her pay with retrospective effect from 22.03.2010 at Rs.11690/- in the pay band Rs.5200-20200 with Grade Pay of Rs.1900/-, in terms of the DoPT OM No.13(9)2009-Estt(Pay-I) dated 21.10.2009 stipulating the stage of fixation equal to the pay in the pay band drawn by her prior to her appointment against the lower post with the grade pay of lower post, instead of protecting the financial upgradation granted under the Assured Career Progression Scheme at a stage equal to the pay drawn by her in the higher grade. The said order was challenged by the first respondent before the Central Administrative Tribunal, the second respondent herein in O.A.No.1355 of 2012. The second respondent, after hearing both sides, has set aside the order dated 26.09.2012 and allowed the O.A., holding that the DoPT OM/instructions cannot override the definition of pay as contained in FR 9(21)(a) of the Fundamental Rules and at best, it could only be by way



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of an amendment of the relevant rules which have the force of law and the same cannot be achieved by way of a clarification under the OM dated 21.10.2009. The second respondent also relied upon the order passed by the Ernakulam Bench in O.A.No.146 of 2010 dated 28.10.2011 on the subject and held that the pay protection should necessarily be taken to mean that a lowering of grade pay from the higher post to the lower post should be compensated by adjusting the pay in the pay band upwards so that there is no erosion of pay or significant reduction in overall emoluments as a consequence of transfer to a lower post. Holding so, the second respondent directed the petitioners herein to ensure that the total pay of the first respondent herein after the second financial upgradation on the date of transfer as Lower Division Clerk is protected in the lower post by adjusting the pay in the pay band upwards in conformity with FR 9(21)(a) of the Fundamental Rules. Aggrieved thereby, the present writ petition has been filed by the Department.

3. The learned Senior Panel Counsel appearing for the petitioners, reiterating the grounds raised in the writ petition, submitted that the



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petitioners have correctly re-fixed the pay of the first respondent on the basis of the DoPT OM dated 21.10.2009, wherein in para-2, it has been clarified that consequent upon implementation of the revised pay structure comprising grade pays and running Pay Bands w.e.f. 1.1.2006 in cases of appointment of Government servants to posts carrying lower Grade Pay under FR 15(a) on their own request, the pay in the pay band of the Government servant will be fixed at a stage equal to the pay in the pay band drawn by him prior to his appointment against the lower post. However, he will be granted grade pay of lower post. Further, in all cases, he will continue to draw his increments based on his pay in the pay band + grade pay (lower). When the first respondent has voluntarily sought the transfer to a lower post i.e., Lower Division Clerk under FR 15(a), she cannot seek for protection of her pay at a stage equal to the pay drawn by her in the higher grade, for the reason that the latter part of the said FR 15(a) clearly states that if the maximum of the pay scale of the lower post is less than the pay drawn by him/her in the higher post, his/her pay may be restricted to the maximum under FR 22(1)(a)(3). However, the second respondent has erroneously set aside the order dated 26.09.2012 and has directed the



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petitioners to protect the pay of the first respondent in the lower post by adjusting the pay in the pay band upwards while fixing her grade pay in the lower post at Rs.1900/- as applicable to that post. Therefore, the impugned order is liable to be set aside.

4. Per contra, the learned counsel appearing for the first respondent submitted that a well reasoned order has been passed by the second respondent after appreciating FR 9(21)(a) of the Fundamental Rules, as the first respondent cannot be deprived of the financial benefit of pay protection on transfer to a lower post only on the ground that she sought for transfer on her own volition to the lower post, when she has been granted the benefit of second financial upgradation under the Assured Career Progression Scheme on completion of 24 years of service in the Establishment. When these facts have been properly appreciated by the second respondent and has also relied upon the order passed by the Ernakulam Bench in O.A.No.146 of 2010 dated 28.10.2011 to hold that the clarification dated 21.10.2009 of the DoPT had to be read harmoniously with the relevant Fundamental Rules as well as the previous instructions on the subject, the learned counsel



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submitted that the impugned order requires no interference.

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5. We also find merits on the submissions made by the learned counsel appearing for the first respondent. It is useful to refer to FR 9(21)(a) of the Fundamental Rules, which reads as follows:-

“(21)(a). Pay means the amount drawn monthly by a Government servant as –

* (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specially classed as pay by the President.

* Basic Pay in the revised pay structure means the pay drawn in the prescribed pay band plus the grade pay but does not include any other type of pay like special pay etc.

- Rule 3(8) of CCS (RP) Rules, 2008.”

Rule 3(8) of the Central Civil Services (Revision of Pay) Rules, 2008 also



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defines the Basic Pay in the revised pay structure as meaning, the pay drawn in the prescribed pay band plus the applicable grade pay but does not include any other type of pay like special pay etc. When the above FR 9(21)(a) defining pay is read along with Rule 3(8) of the CCS (RP) Rules, 2008 explicitly and clearly stating that the pay includes the basic pay plus the applicable grade pay, the reliance placed by the petitioners upon the DoPT OM dated 21.10.2009 to re-fix the pay of the first respondent with retrospective effect from 22.03.2010 without protecting her total pay in the lower post by taking into consideration of the second financial upgradation on the date of transfer as Lower Division Clerk, is clearly unsustainable. Therefore, the Tribunal has rightly set aside the order passed by the petitioners and directed them to issue the revised pay fixation order by protecting the total pay drawn by the first respondent by adjusting the pay in the pay band upwards while fixing the grade pay in the lower post at Rs.1900/- as applicable to that post, so that there is no significant reduction in overall emoluments as a consequence of appointment to the lower post. We do not find any error or infirmity in the order passed by the Tribunal. Moreover, it is also borne out of records that the petitioners have filed



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M.A.Nos.421 and 422 of 2017 before the second respondent seeking for condonation of delay in filing the petition seeking for extension of time to comply with the order passed by the second respondent in the O.A., on the ground that they are taking effective steps to implement the order and considering the said submission, the Tribunal also granted four weeks time to the petitioners to report compliance of the order passed in the O.A., vide order dated 09.06.2017. Contrary to the stand taken before the Tribunal, the petitioner Department filed the instant writ petition before this Court and the same was entertained by ordering notice. In the meantime, the petitioner Department had resorted to recover the excess amount paid from the salary of the first respondent, instead of complying with the order passed by the second respondent.

6. For all the foregoing reasons, while confirming the order passed by the second respondent Tribunal in the O.A., the petitioners are directed to refund the amount so recovered to the first respondent employee within a period of four weeks from the date of receipt of a copy of this order. With this direction, the writ petition stands dismissed. Consequently,



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W.M.P.No.2915 of 2018 is also dismissed. There shall be no order as to costs.

(D.K.K.,J.) (P.B.B,J.)
08.09.2023

Index : yes
Neutral citation : yes

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