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W.P.No.5948 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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M.P.Nos.1 & 2 of 2014

1. N.S.Ramesh
Assistant,
Pondicherry Slum Clearance Board,
Puducherry.
2. S.Buvaneswari
Assistant,
Pondicherry Slum Clearance Board,
Puducherry.
3. B.Ganesan,
Assistant,
Pondicherry Slum Clearance Board,
Puducherry.

...Petitioners

-Vs-

The Pondicherry Slum Clearance Board,
Puducherry, rep by the
Chief Executive Officer,
Pondicherry Slum Clearance Board,
Puducherry.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent with No.PSCB/Estt./Asst./2009/1675 dated 06.11.2013 and to quash the same.



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For Petitioners : Mr.V.Ajayakumar

For Respondent : Mr. Ramaswamy Meyyappan
Government Advocate (Pondy)

ORDER

This Writ Petition has been filed challenging the order dated 06.11.2013 passed by the respondent in No.PSCB/Estt./Asst./2009/1675, thereby revised their pay scale and also ordered for recovery of excess amount paid to the petitioners.

2. The petitioners are working as Assistants in the respondent board. The first petitioner joined service as Daily Rated Clerk on 26.02.1987 and subsequently appointed as Lower Division Clerk on 02.09.1989. Similarly, the second petitioner joined service on 26.02.1987 as Daily Rated Clerk and was regularized in the post of Lower Division Clerk on 01.09.1987. The third petitioner was initially appointed on 30.04.1987 as N.M.R and subsequently appointed as Lower Division Clerk on 02.09.1989. Thereafter, they were promoted as Assistants on 23.08.2005.



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3. The post of Assistant was carrying the pay scale of Rs.5000-8000 as recommended by the fifth Pay Commission. Subsequently, it was revised to Rs.6,500-10,500 and the same was implemented in the case of the Assistants except the petitioners, who were working in Pondicherry Slum Clearance Board. Therefore, they made representation and finally the Government passed an order in G.O.Ms.No.23 dated 27.02.2009 thereby accepted the recommendations of the Central Civil Services Revised Pay Rules.

4. On the strength of the order, the pay scale of the petitioners has been revised from Rs.5000-8000 to Rs.6500-10500 which was subsequently revised and fixed at Rs.12090/- in the pay band-2 at Rs.9300-34800 with grade pay of Rs. 4200/- as recommended by the sixth Pay Commission. Accordingly, the petitioners pay scale was revised and placed before the Governing Body in its 47th meeting held on 22.12.2009. It was approved and issued orders finally.



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5. While being so, the petitioners were issued with an impugned order dated 06.11.2013 stating that the pay fixation of the petitioners have been wrongly made and fixed at Rs.12090 instead of fixing the pay at Rs.9300-34800 with Grade pay of Rs.4200/- with effect from 01.01.2006. It was also proposed to reduce the pay on the basis of the said fixation which in effect, taking away the pay upgradation in the pay revision and fixing the pay at Rs.5000-8000 instead of granting the pay scale of Rs.6500-10500 with effect from October, 2013. Aggrieved by the same, the petitioners filed this present Writ Petition with the above prayer.

6. The learned counsel appearing for the petitioners submitted that the petitioners' scale of pay was revised on the basis of the G.O.Ms.No.23 dated 27.02.2009, which has been approved by the Chairman of the respondent board as well as the Government. The petitioners were given the benefit of pay revision as per the Government Order by revising the pay from Rs.5000-8000 to Rs.6500-10500 and the corresponding pay scale as per the sixth Pay Commission is Rs.9300-34800 with grade pay of Rs.4200/-. Therefore, the respondent cannot



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take away the benefit which was already granted to the petitioners.

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6.1. He further submitted that the respondent had committed the mistake in the case of the fixation of revised pay scale as such the impugned order that too without any notice to the petitioners cannot be passed as against the petitioners. It is illegal, arbitrary and it amounts to violation of the principles of natural justice. Even assuming that the respondent wrongly calculated the pay, the petitioners are not responsible for the wrong calculation and there should not be any recovery from the petitioners.

7. The learned counsel appearing for the respondent submitted that the recommendations of the sixth Pay Commission and sixth Central Pay Scales of CCS (Revised Pay) Rules, 2008 notified by the Government of India in notification No.1/1/2008-IC dated 29.08.2008. It had been implemented by the Union Territory Administration vide G.O.Ms. No.52/F3/08 dated 14.09.2008 of Finance Department, Puducherry. After implementation of sixth pay structure with effect from 01.01.2006, the administration has not issued any order for



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implementation of fifth pay pre-revised scale of Rs.6500-10500 to Assistants, since the power to relax any of the provisions in C.C.S. (Revised Pay) Rules 2008 is vested with the Government of India. Further it was also clarified that the Government of Puducherry has no authority to revise the pay scales and if any anomaly was reported, the same has to be referred to the Government of India for redressal.

7.1. Subsequently, the Puducherry administration has issued guidelines in the case of pay fixation of Junior Accounts Officer in G.O.Ms. No.29/F2/2013 dated 13.09.2013. Accordingly, in the case of fixation of pay in the pay band where posts have been upgraded as a result of recommendation of sixth Central Pay Commission, the pay of the government servants has to be regulated as per Note 2A, below Rule 7 of Clause (A)(i)&(ii) CCS (Revised Pay) Rules, 2008 by multiplying the existing pre-revised basic pay as on 01.01.2006 by a factor of 1.86 and grade pay corresponding to the upgraded scale.

7.2. It is also issued guidelines in an Office Memorandum dated



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13.10.2008 that the above procedure is to be adopted in all cases where pay scales have been upgraded by the pay commission, including constabulary and other ranks in CPMFs/CPOs, Postment and similar cadres in Department of Posts, Assistants and Section Officer in the Central Secretariat and other headquarters organization and the common category cadres of Teachers and Nurses. On the basis of the said guidelines, the Directorate of Accounts and Treasuries, Puducherry has not approved the Pay fixation order issued by the Block Development Officer, Villianur, in respect of the petitioners, since the same is in deviation from the above guidelines issued by the Government of India under C.C.S. (Revised Pay) Rules, 2008.

7.3. Further as per G.O.Ms.No.66/F3/2008 dated 24.10.2008 from the Finance Department, Puducherry, the conditions of service of the institutions shall not be superior to those in government departments including perks, medical benefits, over time allowance, travelling allowance, leave travel concession, etc., except pension and other pensionary posts/categories in Government of Departments and should have the prior approval by the Government. Therefore, he prayed for



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dismissal of this present petition.

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8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. It is seen that the pay has been implemented to the petitioners on the basis of the G.O.Ms.No.23 dated 27.02.2009 issued by the Government of Puducherry based on the Government of India orders in respect of the revision of pay scale, after getting approval from the governing body. Further without committing any fraud on the part of the petitioners, the amount paid to them cannot be recovered. That apart, the impugned order has been passed without giving any notice to the petitioner, which amounts to violation of the principles of natural justice. However, the petitioners cannot claim any subsequent benefits in pursuant to the erroneous pay fixation granted to the petitioners.

10. In view of the above discussions, the impugned order dated 06.11.2013 passed by the respondent in No.PSCB/Estt./Asst./2009/1675, is hereby quashed insofar as the recovery alone. It is made clear that the



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petitioners are not entitled to claim any subsequent benefits in the erroneous pay fixation of the petitioners.

11. Accordingly, the Writ Petition stands partly allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to cost.

06.07.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Chief Executive Officer,
Pondicherry Slum Clearance Board,
Puducherry.



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G.K.ILANTHIRAIYAN. J.

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