



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.29246 of 2022

and

W.M.P.No.28543 of 2022

E.Kuppan

... Petitioner

Vs.

1.The Superintendent of Prison,
Central Prison,
Cuddalore District,
Cuddalore.

2.The Director General of Police – Cum
Chief Director, (Prison and Rehabilitation),
Chennai – 600 008.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent's proceedings in No.6274/Ki.C.Uoo/2015 dated 15.07.2015 and consequential order passed by the 2nd respondent in No.18848/E.S.3/2019 dated 10.08.2021 and quash the same and further direct the respondents to re-fix the scale of pay of the petitioner at the rate of 5000 from 28.08.1998 in the post of Assistant Jailor and consequently refund a sum of Rs.2,71,460/- together with interest.



For Petitioner : Mr.M.Muthappan
For Mr.K.Arumugham

For Respondents : Mr.M.Bindran
Additional Government Pleader

ORDER

The writ petition has been filed challenging the impugned proceedings passed by the 1st respondent dated 15.07.2015 and consequential order passed by the 2nd respondent dated 10.08.2021. Further direction is sought for to re-fix the scale of pay of the petitioner at the rate of 5000 from 28.08.1998 in the post of Assistant Jailor and consequently refund a sum of Rs.2,71,460/- together with interest.

2. The petitioner was permitted to retire from service on 31.10.2012. After his retirement, pay scale was re-fixed on 15.07.2015 on the ground that while in service, he had not completed the Prison Manual Part-I and Subordinate Service Account Test-I, but the annual increment was given every year from 07/1999 to 07/2010. Claiming that the petitioner was ineligible for receiving the annual increment, re-fixation was done in order dated 15.07.2015 came to be passed for a sum of Rs.2,71,460/- and the same



was recovered from the retirement benefits of the petitioner herein on 05.01.2016. The Appeal filed against the recovery before the Director General of Police was also rejected on 18.02.2021. Aggrieved against the action of recovery, the present writ petition has been filed.

3. It is the submission of learned counsel for the petitioner that when a similar revision of pay scale was exercised by the respondents for certain alleged excess payment between the year 1985 to 1998, he had challenged the same before this Court in W.P.No.25353 of 2007. When the writ petition was pending, the petitioner had reached the age of superannuation on 31.10.2012. However, in view of the pendency of the writ petition, his retirement benefits were not disbursed. Ultimately, after the writ petition was allowed on 24.11.2014, his benefits were released on 05.01.2016 by deducting the amount of Rs.2,71,460/-.

4. He further submitted that since the respondents have permitted him to retire from service on 31.10.2012, the pay re-fixation cannot be done after his retirement and that to without any opportunity being extended.

5. Per contra, learned Additional Government Pleader appearing on



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behalf of the respondents placed reliance on the averments in the counter affidavit submitted that every member of the Jail Subordinate Service are required to pass certain departmental tests. Though the petitioner herein had not cleared the Prison Manual Part-I and Subordinate Service Account Test-I, he was given the annual increments from July 1999 to July 2010. Thus, when he had received these annual increments, even though he is not eligible, objection was raised in the audit and accordingly his pay was revised and the recovery of the excess payment was also been made. Thus, he would submit that there is no infirmity in the recovery order.

6. When the respondents themselves have permitted the petitioner to retire from service on 31.10.2012, the relationship of the employer and employee would cease to exist and therefore, re-fixation of the petitioner's pay scale notionally, when he was in service, would be impermissible. This apart, such a re-fixation of the scale on the alleged ground that he had failed to clear the departmental tests and had received annual increments to which he is in-eligible, has been done without prior notice or seeking for the petitioner's objections or otherwise. Such a procedure of re-fixation is clearly in violation of the principles of natural justice and on this ground, the consequential recovery of the amounts, is bad in law.



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7. This apart, the Hon'ble Supreme Court of India in the case of ***State of Punjab vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***, has held that among various circumstances as to when recoveries are impermissible. Three of these circumstances, which were held to be impermissible. When the recovery is sought to be made for a period more than 5 years; When the person from whom the amount is recovered from the pensioner and; When such an employee belongs to Group 'C' or Group 'D'. To apply all these three circumstances, the mistake in having made the excess payment ought to be on the side of the department. All the three circumstances referred by the Hon'ble Supreme Court of India are clearly applicable to the petitioner herein.

8. Firstly, the alleged excess payment was not owing to the mistake of the petitioner herein, but that of the department only. This aspect is not in dispute. It is also not in dispute that the petitioner was an Assistant Jailor, which comes under Group 'C' category. This apart, the petitioner was permitted to retire from service and thus, he is deemed to be a pensioner and therefore, recovery from a pensioner was also impermissible. Lastly, the



recovery which is sought to be made relates to the period between 2010 to 2012 which is over and above five years and which factor was also held to be impermissible.

9. Above all the entire exercise of recovering the amount from the petitioner herein has been done in violation of principles of natural justice and the consequential confirmation of the recovery order passed by the Director General of Police, cannot be legally sustained. In view of all these illegalities, this Court is of the view that the petitioner is entitled for interest on the amount recovered.

10. Accordingly, the impugned order passed by the 1st respondent in proceedings No.6274/Ki.C.Uoo/2015 dated 15.07.2015 and consequential order passed by the 2nd respondent in proceedings No.18848/E.S.3/2019 dated 10.08.2021 are quashed. Consequently, there shall be a direction to the respondents herein forthwith refund the sum of Rs.2,71,460/- with interest of 6% from the date of recovery, till the date of actual and full refund. Such orders for the disbursement of the amount together with interest, shall be passed at least within a period of four (4) weeks from the date of receipt of a copy of this order.



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11. With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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(1/2)

Jeni
Index : Yes
Neutral Citation : Yes
Speaking order

Note: Issue today on 04.01.2024.

To

- 1.The Superintendent of Prison,
Central Prison,
Cuddalore District,
Cuddalore.
- 2.The Director General of Police – Cum
Chief Director, (Prison and Rehabilitation),
Chennai – 600 008.



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M.S.RAMESH, J.

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