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W.P.No.10124 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.10124 of 2017 and

WMP No.11109 of 2017

A.Rajeswari (retd.),
Ex.Section Officer,
National Institute of Epidemiology,
Chennai 600 077.

... Petitioner

Vs.

1. Union of India, rep. by Secretary to Government.
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi 110 001.
2. The Indian Council of Medical Research,
Rep. by its Director General,
Ansari Nagar, New Delhi 110 029.
3. The Director, National Institute of Epidemiology,
Indian Council of Medical Research,
Ayapakkam, Chennai 600 077.
4. Central Administrative Tribunal,
Rep. by its Registrar,
Madras bench, Chennai 600 014.

... Respondents



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Prayer: Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorarified Mandamus to call for the records of the order of the 4th respondent dated 19.01.2017 in O.A.No.1104/2015 and quash the same and consequently, forbear the respondent 2 and 3 from reducing or effecting any recoveries from the pension of the petitioner.

For petitioner : Mr.C.Vigneswaran

For Respondents : Mr. K.Srinivasamurthy,

Standing Counsel for R2 and R3

No appearance for R1

R4- Tribunal

ORDER

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

This writ petition has been filed challenging the order passed by the Tribunal in O.A.No.1104/2015, dated 19.01.2017, in and by which, the prayer of the petitioner to quash the impugned the recovery order, passed by the authorities concerned, was dismissed.

2. The brief facts leading to the filing of the Writ petition is as follows.

The petitioner was initially appointed as Stenographer under the



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second respondent on 03.08.1983 and thereafter, she was promoted as Assistant and at the time of superannuation, she had retired as Section Officer. As per VI Pay Commission recommendation, the pay scale of Rs.5000-8000; 5500-9000; 6500-10500 were merged and replaced by the pay band of Rs.9300-34800 with Grade pay Rs.4200. However, the Commission felt that, some of the posts, which constituted the feeder and promotion posts would come to lie an identical grade and therefore, the Commission had granted higher grade pay of Rs.4600 to some categories of these poses.

2.1. Further, the Commission upgraded the pay scale for the posts, having pre-revised pay scale of Rs.6500-10500 in the pay band-2 with grade pay of Rs.4600, corresponding to the pre-revised scale of Rs.7450-11500. Though the above recommendations were communicated by the Ministry of Finance, vide their official memorandum dated 13.11.2009, the same was not implemented in the institutions under the second respondent.

2.2. Initially, Grade pay of Rs.4600 was granted to all those who were



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in the pre-revised pay scale of Rs.6500-10500 as on 31.12.2005, using the fitment table for the pay scale of Rs.6500-10500. Later, as per the clarification issued by the second respondent, vide order dated 19.10.2012, the pre-revised scale of pay Rs.6500-10500 were replaced in the scale of Rs.7450-11500 to protect the seniority. Accordingly, the petitioner's pay was revised with scale of pay Rs.7450-11500, using the fitment table and the arrears were also paid to the petitioner. Subsequently, the third respondent, has issued the impugned order stating that the petitioner's pay was wrongly fixed with Rs.7450-11500 and hence, the same has to be reduced and the excess amounts paid to her, to be recovered. Challenging the above order, the petitioner had filed the original application before the Tribunal and the same was dismissed. As such, the petitioner has approached this Court by filing the writ petition.

3. Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents 2 and 3.

4. The points for determination are



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- i) Whether the impugned order for recovery is to be quashed or not?
- ii) Whether the fixation of scale of pay Rs.7450-11500 is to be revised or not?

5. Point No.1

Admittedly, the petitioner had retired from service on 31.12.2012 as Section Officer and as per the clarification letter dated 19.10.2012, the petitioner's pay was revised, based on the fitment table for the pre-revised scale of Rs.7450-11500 and the arrears amount has also been paid to her. Subsequently, vide memoradam dated 12.05.2015, it was clarified that, the VI Central pay Commission upgraded the pay scale of pay Rs.6500-10500 to 7450-11500, only for placing the pay scale in Grade Pay of Rs.4600 in the pay band-2 and hence, the pay scale of Rs.6500-10500 cannot be treated as upgraded to Rs.7450-11500 and for the same, the table of Rs.7450-11500 will not be applicable under this situation. Therefore, it was ordered that the pay in respect of the official is being suitably revised w.e.f. 1.1.2006 and over payments made, shall be recovered accordingly.

5.1. According to the petitioner, without providing any opportunity to the petitioner, the impugned recovery order has been issued, that too after



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more than two years from the date of her retirement. The learned counsel relying upon the decision of the ***Hon'ble Supreme Court in White Washer's case reported in (2015) 4 Supreme Court Cases 334*** , submitted that the impugned recovery order is liable to be quashed.

5.2. At this juncture, it is worthwhile to extract the relevant portion of the above said decision of the Apex Court in ***White Washer's case***, which runs as follows.

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) ..
- (ii) Recovery from the retired employees or the employees, who are due to retire within one year, of the order of recovery.

In the light of the above decision of the Apex Court, recovery from the petitioner is impermissible in law and hence the same cannot be initiated by



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the respondent, based on the impugned order. Therefore, we inclined to quash the impugned order, with regard to the recovery alone.

6. Point No.2

As far as the fixation of scale of pay of Rs.7450-11500 is concerned, it is the contention of the respondents that by inadvertently, the pay scale of Rs.6500-10500 has been re-fixed, using the fitment table Rs.7450-11500 and hence, the same is liable to be re-fixed suitably. At this juncture, it is useful to rely upon the statement made by the respondents in the counter affidavit, which is extracted as under.

... The Ministry of Finance (IC) had communicated, vide order dated 13.11.2009 that the posts which were in the pre-revised scale of pay Rs.6500-10500 as on 01.01.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2 will be granted Grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 01.01.2006. Further, in terms of the afore mentioned provisions of CCS (RP) Rules, 2008, in case a post already existed in the pre-revised scale of Rs.7450-10500 should be merged with the post in the scale of Rs.7450-11500.

Based on the above, the posts which were carrying the pay scale of Rs.6500-10500 have been granted the Grade pay of Rs.4600 w.e.f.



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01.01.2006. With regard to grant of upgraded scale of Rs.7450-11500, the ICMR has clarified vide letter No.6/1/2007-Admn-II (Pt.) dated 21.04.2015 that the said pay scale was not available in ICMR structure during V CPC pay scales. Only VI CPC upgraded the pay scale of Rs.6500-10500 to Rs.7450-11500 only for placing the pay scale in Grade Pay of Rs.4600 (PB-2.) Therefore, the pay scale of Rs.6500-10500 cannot be treated as upgraded to Rs.7450-11500 and hence, the table of Rs.7450-11500 will not be applicable under this situation. Further, it had mentioned that the letter dated 19.10.2012 issued by ICMR is superseded. Hence, the claim of the petitioner is not tenable.

7. From the above, it is clear that an error was committed by the Department by granting upgraded pay scale of Rs.7450-11500 to the petitioner. Further, it was clarified by the ICMR, vide letter dated 21.04.2015 that the said pay scale was not available in ICMR structure during V CPC pay scales and only VI CPC upgraded the pay scale of Rs.6500-10500 to Rs.7450-11500 for placing the pay scale in Grade Pay of Rs.4600 (PB-2.) and hence, the pay scale of Rs.6500-10500 cannot be treated as upgraded to Rs.7450-11500. Therefore, we are of the view that the fixation of scale of Rs.7450-115 is liable to be re-fixed suitably. Accordingly, the impugned order, with regard to the revision of pay scale, does not warrant any interference and the same is liable to be confirmed.



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8. In the result, this writ petition is partly allowed, setting aside the impugned order with regard to recovery alone and as far as the revision of scale of pay of the petitioner is concerned, the same is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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

13.12.2023

Internet: Yes/No

Index : Yes/No

mst

To

1. The Registrar, Central Administrative Tribunal,
Madras Bench, Chennai 600 104.
3. The Secretary to Government, Union of India,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi 110 001.
3. The Indian Council of Medical Research,
Rep. by its Director General,
Ansari Nagar, New Delhi 110 029.
4. The Director, National Institute of Epidemiology,
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