



W.P.(MD).No.3954 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.08.2023

PRONOUNCED ON : 04.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.3954 of 2020

and

W.M.P(MD)Nos.3348, 3350, 3352 and 8676 of 2020

P.Radhakrishnan,
Retired Special Sub Inspector of Police,
S/o.G.Palanivel,
No.119, 3rd Street, Saranath Nagar,
Thalavaipalayam Road,
Mariamman Kovil Post,
Thanjavur - 613 501.

... Petitioner

Vs.

- 1.The State Government of Tamil Nadu,
Represented through its Secretary,
Home (Police) Department,
Secretariat,
Chennai.
- 2.The Director General of Police,
Chennai.
- 3.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.
- 4.The Superintendent of Police,
Thanjavur.



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5.The Principal Account General (A & E),
Annasalai,
Chennai – 18.

6.The Superintendent,
Salary Section,
Superintendent of Police Office,
Thanjavur.

7.The Administrative Officer,
Superintendent of Police Office,
Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders passed in D.O.No.1184/2018 in C.No.S2/41661/2017, dated 29.10.2018 and subsequent order of regulation of pay and order of recovery in C.No.D2/ACR-188/2018, dated 16.09.2019 and quash the same, further direct the respondents to repay the recovered sum of Rs.1,58,715/- (One Lakh Fifty Eight Thousand Seven Hundred and Fifteen Only) with 18% interest and further refix the petitioner's pension with increment notionally from 01.10.2018 as Rs.54,100/- and revise the petitioner's pension.

For Petitioner	: Mr.T.S.Mohamed Mohideen
For RR 1 to 4, 6 & 7	: Mr.N.Muthu Vijayan Special Government Pleader
For R – 5	: Ms.S.Mahalakshmi Standing Counsel



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ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned orders passed in D.O.No.1184/2018 in C.No.S2/41661/2017, dated 29.10.2018 and subsequent order of regulation of pay and order of recovery in C.No.D2/ACR-188/2018, dated 16.09.2019 passed by the fourth respondent and further direct the respondents to repay the recovered sum of Rs.1,58,715/- (One Lakh Fifty Eight Thousand Seven Hundred and Fifteen Only) with 18% interest and further refix the petitioner's pension with increment notionally from 01.10.2018 as Rs.54,100/- and revise the petitioner's pension.

2.Heard Mr.T.S.Mohamed Mohideen, learned counsel appearing for the petitioner, Mr.N.Muthu Vijayan, learned Special Government Pleader appearing for the respondents 1 to 4, 6 & 7 and Ms.S.Mahalakshmi, learned Standing Counsel appearing for the fifth respondent and perused the materials available on record.



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3.The petitioner was appointed as Grade II Police Constable on 17.11.1988 with a basic pay of Rs.505/-. Later he was promoted as Grade I Police Constable, Head Constable and Special Sub-Inspector of Police on 28.09.1999, 28.10.2004 and 01.12.2013 respectively. The petitioner retired from service on 30.06.2019. The last drawn pay shown in his pension proposal was Rs.52,500/-. After three months from the petitioner's retirement, on 16.09.2019, a sum of Rs.1,58,715/- was recovered from the petitioner's gratuity without notice. The petitioner made a representation before the fourth respondent to pay his increment as on 01.10.2018, tuning Rs.54,100/-. However, the impugned regulation/revision of pay dated 29.10.2018 and an order of recovery, dated 16.09.2019 was passed by the fourth respondent.

4.The impugned orders, dated 29.10.2018 and 16.09.2019 are based on a Government Letter in No.39839/Police V / 07-3, dated 24.08.2007, by which, clarification was given by the Department of Home (Police V), Secretariat, Chennai – 9 and the same reads as follows:-

"I am directed to refer to your letter cited wherein it has been requested to clarify as to whether



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the Police Personnel who are upgraded as Grade I Police Constable may be permitted to exercise their option to fix their pay till the date of accrual of the next increment under FR 22(1) a(i) in the lower rank or whether their pay may be fixed under relevant rules from the date of their actual date of upgradation. In this connection, I am directed to state that Grade II Police Constables who have completed 10 years of service as on 20.10.2004 are deemed to have been upgraded and not promoted with reference to any panel. Therefore, their pay shall be fixed under FR 22-B straightaway on that date itself without getting any option."

5.The said Government Letter, dated 24.08.2007 has been cancelled on 06.02.2019 by the first respondent vide Letter M.S.No.83, dated 06.02.2019 and the relevant portion of which is extracted as follows:-

"2.I am to state that in your letters cited, it has been stated that the police personnel who were appointed as Grade II Police Constables in the year 1981, 1982, 1984 and 1985 and upgraded as Special Sub Inspector of Police in Thoothukudi have given representations that their Juniors who were appointed as Grade II Police Constables in the year 1986 and



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upgraded as Special Sub-Inspector of Police are getting more pay than these police personnel and requested for pay rectification, and it is verified that, they are eligible for fixation of pay on par with their Juniors. For the Police Constables who were upgraded in the year 1994, their pay was fixed based on their option in pay fixation. It has also been requested to clarify from which date the clarification given by Government viz, letter dated 24.08.2007 may be given effect.

3. In this regard, I am to state that, generally in most of the cases where the posts have been upgraded to next category, fixation under FR.22(B) including exercising option under 8th proviso is allowed. Upgradation of posts of Police Personnel have been done as a special case based on the then Chief Minister's Announcement and Government's Policy decision and hence, fixation of pay of the police personnel as per the options exercised by the individuals, need not be denied.

4. I am, therefore, to direct that the instructions issued in Government letter No.39839/Police.V/2007-3, Home Department, dated 24.08.2007 is hereby cancelled. As per Rule provisions, options exercised within a stipulated period of one month shall only be entertained and there is no rule provision to entertain belated options. Hence, no fresh options need be obtained from the individuals in whose cases, orders for fixation of pay were issued long ago. However, if



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any junior getting more pay anomaly is brought to notice by any senior, then action may be taken to rectify it as per ruling (2) under FR.22(B) or other relevant rules in force.”

6. Based on the said Letter, the revision of pay has already been cancelled. As a result of which, the revision/regulation of pay and recovery order are non-est in the eye of law. The last drawn pay shown in his pension proposal was Rs.52,500/-. The impugned order is against the dictum laid down by the Hon'ble Apex Court in the case of ***State of Punjab and other Vs. Rafiq Masih (White Washer's case)*** reported in ***2015 (4) SCC 334***.

7. The fourth respondent filed a counter-affidavit. The learned Special Government Pleader appearing for the respondents 1 to 4 & 5 to 7 admitted the mistakes on their part in passing the order of regulation of pay. He further submitted that as per the instructions/clarifications issued in the Government Letter in No. 39839/Police V / 07-3, dated 24.08.2007 and Government Letter in No.3602/Pol.V/2008-2, dated 28.04.2008, the pay of the Police Personnel who were upgraded from one post to higher post shall be



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fixed under FR 22B straightaway on that date itself ie., the date of upgradation without getting any option. The pay of the above SSIs were mistakenly fixed under FR 22(1)(a)(i) with effect from 28.09.1999 and refixed under FR 22(b) with effect from 01.10.1999 at their option. Hence, it has been ordered that the abovesaid communications are cancelled and their pay was regulated. In the said order, it has been ordered that the overdrawn amount will be recovered from them. He fairly conceded that the impugned orders, dated 29.10.2018 and 16.09.2019 are based on the clarification issued in the Government Letters, dated 24.08.2007 and 28.04.2008 and that the Government Letter, dated 24.08.2007 was cancelled by the first respondent in Letter (MS) No.83, Home (Police-8) Department, dated 06.02.2019. Thus, based on the letter, the revision of pay which has been ordered was cancelled. As a result of which, the petitioner's pay has to be restored. On receipt of the said restoration order, arrears of pay and allowances, if any, will be drawn and paid to the petitioner.

8.In view of the admission made by the learned Special Government Pleader, the impugned orders dated 29.10.2018 and 16.09.2019 passed by the fourth respondent are hereby quashed and consequently, this Court direct the first respondent to repay the



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recovered sum of Rs.1,58,715/- to the petitioner with interest at the rate of 6% from the date of recovery till the date of realization, within a period of twelve weeks from the date of receipt of a copy of this order and consequently, the fourth respondent is directed to refix the last drawn salary of the petitioner with increment right from 01.10.2018 as Rs.54,100/- and revise the petitioner's pension and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order and thereafter, forward the same to the fifth respondent and the fifth respondent, who is in turn directed to consider the same within a period of four weeks thereafter.

9. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC : Yes
Index : Yes
Internet : Yes
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To

- 1.The Secretary,
Represented by the State Government of Tamil Nadu,
Home (Police) Department,
Secretariat,
Chennai.
- 2.The Director General of Police,
Chennai.
- 3.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.
- 4.The Superintendent of Police,
Thanjavur.
- 5.The Principal Account General (A & E),
Annasalai,
Chennai – 18.
- 6.The Superintendent,
Salary Section,
Superintendent of Police Office,
Thanjavur.
- 7.The Administrative Officer,
Superintendent of Police Office,
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L.VICTORIA GOWRI, J.

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