



WEB COPY



W.P.(MD)No.3089 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.3089 of 2017

S.Soundararajan

... Petitioner

Vs.

The Principal District Judge,
Theni.

...Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the impugned order of the respondent in his proceedings in D.No.1114 dated 09.02.2017 and quash the same and consequently direct the respondent to refund the recovered amount of Rs. 6,90,204/- from gratuity within a stipulated time fixed by this Court.

For Petitioner : Mr.C.M.Arumugam

For Respondent : Mr.D.Venkatesh

ORDER

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

The writ petition has been instituted questioning the validity of the order dated 09.02.2017 refixing the pay of the writ petitioner and to recover the excess salary already paid to him.



2.The petitioner was initially appointed as Examiner in Sub Court, Periyakulam on 11.01.1984. He was promoted as Junior Assistant, Assistant, Head Clerk in District Munsif cum Judicial Magistrate Court and Central Nazir and retired from service on 31.05.2016 on attaining the age of superannuation. The pay as applicable to the writ petitioner was fixed by the establishment. Subsequently, the Audit Authorities found that the fixation was erroneous and consequently raised an objection. Based on the objection, the impugned order of recovery has been imposed.

3.The respondent could not able to establish any misrepresentation or otherwise on the part of the petitioner for erroneous fixation of pay. The error had occurred on account of the mistake committed by the establishment, for which the petitioner cannot be penalized. No doubt, the error in fixing the pay has to be rectified and the pay as applicable is to be granted to the petitioner in accordance with the Pay Rules and the Government Order in force.

4.In the present case, the petitioner has not given any undertaking to repay the excess salary, if any paid. Based on the audit objection only, the order of recovery has been imposed. Hence, we are inclined to consider the recovery



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portion alone. More so, the petitioner attained the age of superannuation and retired from service. Any recovery would cause prejudice to the pensioner. That being the principles considered by the Apex Court consistently, the order impugned in the writ petition dated 09.02.2017 in proceeding D.No.1114 is quashed with reference to the recovery alone. As far as refixaion is concerned, the respondents are directed to correct the errors and fix the pay and the pay pension in accordance with the Pay Rules and Government Orders in force. The recovery, if any already made, is directed to be reimbursed in favour of the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

5. With the above observations, this writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) & (V.L.N., J.)
05.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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