



W.P.(MD).No.22664 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 17.10.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD).No.22664 of 2019
and
W.M.P.(MD).Nos.19409 and 19410 of 2019

S.Babuji Siva Prakash

.. Petitioner

Vs.

1.The Principal Subordinate Judge,
Tenkasi.

2.The Principal Accountant General,
(AEV) Tamil Nadu,
361, Anna Salai,
Chennai.

3.The Sub-Treasury,
Tenkasi.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to proceedings of the 1st respondent in his proceedings in R.No.245 of 2019 dated 12.06.2019 and 2nd respondent in his proceedings in PO2/10223947/1/ R0218697/285 dated 28.01.2009 and consequently restore the petitioner's original scale of pay and pension prior to passing impugned order.



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For Petitioner : Mr.S.Senthil Sankaranathakumar
For R-1 : Mr.G.Thalaimutharasu
For R-2 : Mr.P.Gunasekaran
For R-3 : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

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

The notice dated 12.06.2019 calling upon the petitioner to remit the excess pay and allowances already drawn by the petitioner is under challenge in the present Writ Petition.

2. The writ petitioner was holding the post of Head Clerk and he retired from service on attaining the age of superannuation on 29.02.2016. The impugned notice has been issued to recover the excess salary paid to the petitioner after a lapse of about three years from the date of retirement. The pay admissible to the writ petitioner was erroneously fixed by the establishment and the petitioner has not made any misrepresentation or false statement for the purpose of revision of scale of pay. Therefore, it is a



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mistake committed by the establishment for which the petitioner cannot be penalised after attaining the age of superannuation.

3. The learned counsel for the petitioner mainly contended that the pay was fixed in accordance with the Pay Rules and there is no infirmity.

4. The learned counsel appearing for the second respondent made a submission that the Accountant General of Tamil Nadu has verified the correctness of the fixation made and accordingly, indicated the excess payment of salary paid to the employee. However, the employer has to follow the procedures by affording opportunity to the writ petitioner for the purpose of imposing recovery. In the present case, no such procedure had been followed and in the name of notice, the petitioner was directed to remit the excess amount of salary, which is perverse.

5. Even in cases of excess payment of salary, the same cannot be recovered from the retired employees. In the event of directing the retired employees to remit the excess pay, the same will affect their normal life. However, the authorities competent are empowered to correct the scale of



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pay as admissible to the employee concerned as per the Pay Rules and Government Orders in force. In the present case, it is contended that the fixation of pay was correct in accordance with the Pay Rules and the excess salary paid alone is directed to be recovered. Since the petitioner was allowed to retire from service on 29.02.2016 and the impugned notice was issued on 12.06.2019 after a lapse of about three years from the date of retirement, we are inclined to consider the Writ Petition. Accordingly, the impugned notice dated 12.06.2019 passed by the first respondent is set aside. There is no impediment for the respondents to verify the correctness of the pay and pay the pension as admissible to the petitioner under the Rules.

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

(S.M.S.,J.) (V.L.N.,J.)
17.10.2023

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



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