IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-02-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM
And
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WP No.1625 of 2023
And
WMP No.1746 of 2023

1.Mr.A.Rajendran
2.Mrs.P.Jayanthi
3.Mrs.M.Amutha .. Petitioners

-vs-

1.The Secretary to Government,
Home (Pay Cell) Department,
Fort St. George,
Madras-9.

2.The Registrar General,
High Court,
Madras-104.

3.The Principal District Judge,
Villupuram. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in (1) D.No.12162 dated 07.12.2022 and (2) D.No.12375 dated 13.12.2022 on the file of the respondents herein, and quash the same and consequently direct the respondents to give the benefits of 5% personal pay to the petitioners on the basis of G.O.Ms.No.664, Finance (P.C.) Department, dated 24.08.1992.

For Petitioners	:	Mr.S.Tamilselvan
For Respondent-1	:	Ms.M.Jayanthy, Additional Government Pleader.
For Respondents-2 and 3:		Mr.V.Vijay Shankar

<u>O R D E R</u>

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The order dated 13.12.2022 communicating the audit objections, is sought to be quashed in the present writ proceedings. Further direction is sought for to grant 5% personal pay to the petitioners based on G.O.Ms.No.664, Finance Department, dated 24.08.1992.

2. The petitioners were granted 5% personal pay with effect from 04.12.1992, 01.08.1992 and 08.12.1992 respectively as per G.O.Ms.No.664, dated 24.08.1992. While-so, recovery proceedings were served to the petitioners in the year 2022 stating that 5% personal pay was erroneously granted to the petitioners and the Audit Wing raised an objection. Thus the petitioners contend that 5% personal pay was granted based on the Government Orders issued pursuant to the recommendations of the V Pay Commission. When the petitioners were received the benefit of 5% personal pay for long years merely based on the audit objections raised by the Audit Wing, the pay revision was effected and recovery order has been passed. Thus the present writ petition came to be instituted.

3. It is not in dispute that 5% personal pay was granted based on G.O.Ms.No.664. The employees falling under the categories stipulated in G.O.Ms.No.664 were granted 5% personal pay as a measure of rectification

of pay anomaly.

4. The learned Additional Government Pleader appearing on behalf of the first respondent and the learned counsel appearing on behalf of the respondents 2 and 3 would oppose the contentions raised on behalf of the petitioners by stating that 5% personal pay was erroneously granted to the writ petitioners. Since Audit Wing raised objection, re-fixation was made and consequential recovery was imposed. Audit objections were raised based on the Government Orders and no pay anomaly aroused in the case of the petitioners. The pay admissible to the petitioners were revised in accordance with the Pay Rules and the Government Orders in force. All the petitioners have joined in service in the year 1992 and 5% personal pay was granted in the V Pay Commission implemented with effect from 01.05.1988. Therefore, the pay of the petitioners in the year 1992 was fixed as per the Pay Rules and they had not suffered any pay anomaly during the relevant point of time. Thus the grant of 5% personal pay to the petitioners were found to be objectionable by Audit Wing. The case of the petitioner were not falling under the categories of pay anomaly occurred during the implementation of Pay Commission with effect from 01.05.1988. Since the

petitioners were initially appointed into service in the year 1992, the petitioners were drawing 5% personal pay, for which they are not entitled.

5. Unjust gain of public money is impermissible under law. In such circumstances, the Authorities Competent are empowered to rectify the errors in fixation of pay and grant the correct pay as applicable. Since the petitioners were receiving the benefit of 5% personal pay for long years, recovery would result in hardship at this length of time. Therefore, we are inclined to set aside the recovery alone.

6. The revised pay fixation granted by the respondents in accordance with the Pay Rules and Government Orders shall continue. The respondents are directed not to recover excess salary, if any, already granted to the writ petitioners. If any amount has been recovered pursuant to the recovery proceedings, the said amount alone is directed to be refunded to the petitioners within a period of twelve weeks from the date of receipt of a copy of this order.

7. Accordingly, the revised fixation of pay done by the respondents stand confirmed. Consequently, the present writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

16-02-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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