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W.P.No.2981 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM

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

W.P.No.2981 of 2023
and
W.M.P.Nos.3082, 3084 & 3085 of 2023

K.A.Baskaran

... Petitioner

Vs.

1. The Registrar General,
High Court of Madras,
Chennai-104.

2. The Principal District Judge,
Dharmapuri District,
Dharmapuri.

3. The Principal Accountant General (A and E) of Tamil Nadu,
O/o. Accountant General, Teynampet,
Chennai-18.

4. The District Treasury Officer,
Dharmapuri.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the orders passed by the 2nd respondent in the proceedings in



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(i) R.O.C. No. 2654- A/ 2022, dated 30.06.2022 , (ii) R.O.C. No. 6588/ 2022, dated 30.06.2022 , (iii) R.O.C. No.5084/ 2022, dated 28.07.2022, (iv) R.O.C. No.8377/ 2022, dated 8.09.2022, and orders passed by the 3rd respondent in (v) Admissibility Report of Entitlements of pensionary benefits of retiring employees in PO2/ 10227307 /2/ R0227307 dated 27.09.2022 , (vi) Intimation of Gratuity Authorization in PO2/ 10227307 /2/ PPO No. R0227307 dated 29.09.2022 and quash the same, consequently direct the respondents to compute and pay the pension and other terminal benefits to the petitioner without effecting any downward revision of pay and in accordance with Hon'ble high Court's order dated 20.03.2017 in W.P. (MD) No. 13665 of 2013 and M.P.Nos. 1 and 2 of 2013 , Official memorandum issued by the 1st respondent in R.O.C. No. 1163/ 2003/ G2 dated 7.10.2009 and Rule 22-B of Fundamental rules.

For Petitioner : Mr.HariKrishnan .R

For Respondent : Mr.M.Fakkir Mohideen
(for R1 & R2);

Mr.V.Vijay Shankar (for R3);

Mr.P.Ananda Kumar,
Government Advocate (For R4).

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The order of re-fixation and the consequential recovery imposed on the petitioner are under challenge in the present writ petition.



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2. The writ petitioner was initially appointed as Xerox Machine Operator in the Judicial Department. He was promoted up to the post of Head Clerk and voluntarily retired from service on 30.06.2022. The application seeking voluntary retirement was submitted by the petitioner in March 2022.

3. The authorities verified the service records and found that excess pay fixation was made in the case of the petitioner. Accordingly, the 5% personal pay granted to the writ petitioner in the post of the Examiner of Copies, with effect from 16.09.1998, was found to be erroneous. That apart, 3% promotional increment granted, with effect from 02.06.2011, was also identified as an erroneous fixation. In respect of the above two objections, impugned orders are passed revising the scale of pay of the petitioner and imposing recovery.

4. The learned counsel for the petitioner would submit that the petitioner is eligible for 5% personal pay since he is falling under one of the four categories enumerated in G.O.Ms.No.664, so also the petitioner was promoted to the post of Head Clerk and thus, he is eligible to draw 3% promotional increment.



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5. The learned counsel for the respondent would oppose the contention of the petitioner by stating that the petitioner was not promoted but redeployed. Redeployment cannot be construed as promotion. Thus, the grant of 3% promotional increment is inadmissible to the post of the petitioner and thus, the audit objection was raised and consequently, the recovery order has been issued.

6. We have considered the rival submissions made on behalf of the parties. It is not in dispute that the petitioner was redeployed to the post of Bench Clerk Grade III. Redeployment to the post of Bench Clerk Grade III from the post of Assistant, cannot be construed as promotion. The post of Assistant and Bench Clerk Grade III carry identical scale of pay and therefore, it is not a promotional post. Since the petitioner's redeployment to the post of the Bench Clerk Grade III is not a promotion, the 3% promotional increment granted to the petitioner is an error committed by the establishment and therefore, the recovery of 3% promotional increment granted is to be recovered from the petitioner.



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7. In respect of redeployment not amounting to promotion, the

Division Bench of this Court, in the case of ***V.Rajaseskaran Vs. Principal***

District Judge Salem, dated 29.09.2021, in W.P.No.5696 of 2021 held as

follows:

“4. So as not to allow the personnel to stagnate in one position and to rotate the employees from one section or department to another, the exercise of redeployment is undertaken by the employer. Redeployment may also happen upon the employer finding a particular employee more suitable in a different position than the position where such employee has been placed. Since redeployment does not entail any privilege or benefit, as to how and when and in what manner the exercise of redeployment would be conducted, is not something that a concerned employee may assert. It is possible that one employee may not be redeployed whereas his colleagues in the same post may all be redeployed.

5. The exercise of redeployment, if appreciated, will provide the key to the matter. Redeployment is for the administrative purpose and may or may not be as per the exigencies. It may be a routine redeployment or it may be a redeployment based on a particular need or for other purposes that the employer may think it



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appropriate to bring about greater efficiency in the functioning. It does not give or take away any benefit or right and, as such, an employee who has been redeployed or another who has not been considered for being redeployed cannot raise any grievance since there is no material benefit ~ and, consequently prejudice ~ suffered by the concerned employee. In a sense, it is akin to a transfer from one department to the other and the only benefit or advantage may be that the department could be closer to the gate or further away from the gate.”

8. As far as the 5% personal pay granted with effect from 16.09.1998 is concerned, during the relevant point of time, the petitioner was working in the cadre of Examiner of Copies which is Group-D post. That apart, the petitioner had retired from service voluntarily on 30.06.2022.

9. Applying the principle laid down in the case of ***Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334***, excess salary need not be recovered from the retired employee. In the event of any such recovery, it will result in hardship to the retired employee. Therefore, the recovery of 5% personal pay alone is set aside. The re-fixation done in



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accordance with pay rules and Government orders in force stands confirmed. The petitioner is eligible to get all pensionary benefits and pension based on the revised fixation of pay, as done by the respondents in the impugned proceedings.

10. Therefore, recovery of 5% personal pay alone is set aside. The grant of 3% promotional increment granted is directed to be recovered.

11. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,)

(K.R.S.J.,)

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Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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S.M.SUBRAMANIAM, J.

and

K.RAJASEKAR, J.

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