



WEB COPY



W.P.No.21194 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.21194 of 2023
and
WMP No.20601 of 2023

1. Union Of India,
Rep By The General Manager,
Southern Railway,
Park Town, Chennai- 600 003.
2. Chief Personnel Officer
Southern Railway,
Park Town Chennai-3.
3. Divisional Personnel Officer
Divisional Office, Personnel Branch,
Southern Railway, Madurai.
4. Assistant Personnel Officer
Divisional Office, Personnel Branch
Southern Railway, Madurai.

... Petitioner

Vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench High Court Building,
Chennai- 104.

2 P.S.Krishna Kumar

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to call for the records of the Hon'ble Tribunal in its impugned order dated 28.06.2022 in OA 1120 /2019 passed by the 1st Respondent, Hon'ble Central Administrative Tribunal, Madras bench and to quash the same.

For Petitioners : Mr. S. Girish,
for Mr. M.Karthikeyan

For Respondents : R1- Tribunal

Mrs. Y. Kavitha
for M/s.P.V.S.Giridhar Associates,
for R2

ORDER

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

The writ petition has been filed challenging the order dated 28.06.2022 passed in O.A.No.1120 of 2009.

2. The second respondent filed an application before the Central Administrative Tribunal challenging the revision of pay effected and the consequential recovery imposed. The re-fixation of pay was done vide proceeding dated 14.05.2019 on the ground that an error crept in fixation of pay from the year 1988 onwards. By way of correction of error, the revision was effected with effect from 10.07.1988 and excess pay made to the second



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respondent was sought to be recovered in the said proceedings. Thus, the

second respondent filed Original Application, which was allowed by the Tribunal . Aggrieved thereby, the present writ petition is filed by the Department.

3. The learned Panel Counsel appearing for the writ petitioners would submit that it was an error, which was corrected through the order. The fixation of pay was erroneously made during the relevant point of time in the year 1988. Subsequently, the authorities found that the error continued during the subsequent fixation and therefore correctional procedures were followed and revision was effected. Thus there is no infirmity in respect of the re-fixation of order passed. The Central Administrative Tribunal has allowed the OA without considering the fact that error in fixation of pay can be corrected by the department.

4. The learned counsel appearing on behalf of the second respondent would oppose by stating that the fixation of pay made in the year 1988 was in accordance with the Pay Rules and the Government Orders. One increment was granted to the second respondent and as per the Service Register, his scale of pay was revised from 750-940 to 775-1025 and his pay was fixed at Rs.835



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as on 10.07.1988. Thus, there was no error. In this regard, the learned counsel for the second respondent relied on the judgment of the **Kerala High Court** in a similar case in **A.Kolappan /vs/ Union of India represented by Secretary to Government of India, Ministry of Railways** in **O.P.No.27604 of 2002 dated 26.11.2007**.

5. The principles governing the revision of pay have been settled by the Constitutional Courts. With reference to the **Kerala High Court judgment** relied on by the learned counsel for the second respondent, the learned Panel Counsel for the writ petitioners would submit that the principles are subsequently settled by the **Hon'ble Supreme Court in the case of Union of India and others /vs/ Rakesh Kumar and others 2017(13) SCC 388**. The relevant portion of the judgment runs as follows:-

" 37. In Chanda Devi case, ultimately this Court set aside the judgment of the Rajasthan High Court, which held that the widow of Shri Niwas was entitled for pension. This Court held that there is a distinction between casual labour having temporary status and the temporary servant. The cases before us are all the case where casual labour has been granted temporary status. Grant of temporary status is not equivalent to grant of an appointment against a post. "



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6. We have considered the issues. It is not in dispute that the pay of the second respondent was fixed at Rs.835/- with effect from 10.07.1988.

Subsequently, the establishment of the petitioner railways found that the pay of the second respondent has been erroneously fixed at Rs.835/- in the scale of Rs.775-1025 on 10.07.1988 instead of Rs.799/-. Therefore, the erroneous fixation done was corrected and his pay was refixed at Rs.799/- in the scale of Rs.775 -1025 from 10.07.1988.

7. Regarding refixation of pay granted, this Court is of the considered opinion that error in fixation can be corrected at any point of time by the competent authority. No employee is entitled to get salary based on an erroneous fixation of pay. There is no time limit to correct the errors in fixation of pay. Whenever an error or mistake is identified by the Establishment, the Department is empowered to correct the pay and pay the salary as applicable to an employee in consonance with the Pay Rules and the Government Orders in force. No Government employee is entitled to get more salary, which would result in unjust gain.

8. The learned counsel for the second respondent would submit that fixation was done correctly in the year 1988. Granting pay scale is purely executive function and hence, the Court should not interfere with the same. It



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may have a cascading effect creating all kinds of problems for the Government and authorities. Equation of posts and salaries are complex matter, which should be left to an expert body. The Courts in exercise of their limited power of judicial review can only examine whether the decision of the authorities is rational and just or prejudicial to a particular set of employees.

9. The Courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to the employee. Even in case where the Court holds the order passed by the authorities to be unsustainable, then a direction should be given to reconsider the matter and pass a proper order. The Court should avoid granting a particular scale of pay and compelling the Government to implement the same.

10. In the context of the above legal principles settled by the Courts, we are of the considered opinion that refixation of pay in the case of the second respondent was done merely on the ground of error in fixation. Error in fixation can be corrected at any point of time and therefore, we are not inclined to interfere with the refixation done in the case of the second respondent.



11. As far as the recovery part is concerned, the error was identified after long years. There was no misrepresentation on the part of the second respondent. The refixation of pay was done at the instance of the establishment. Thus, the second respondent cannot be held responsible for excess payment of salary. More so, the second respondent already retired from service and any such recovery of excess pay already paid to him would result in affecting his livelihood. The second respondent would be getting only pension and therefore, recovery cannot be imposed. The Courts have repeatedly held that the recovery of excess salary paid to the employee after retirement is impermissible. Therefore, we are of the considered opinion that recovery of excess pay from the second respondent is impermissible. However, errors in pay fixation may be corrected.

12. Since, the learned counsel for the second respondent would submit that the case of the second respondent is similar to that of the case decided by the High Court of Kerala, the 2nd respondent is given liberty to submit the same along with the documents to justify the fixation of pay done to him in the year 1988. In the event of producing any new document by the second respondent, the same may be looked into by the writ petitioner/authorities and if there are any justifiable reasons, then the same may be considered in accordance with law.



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13. As far as the present case is concerned, we do not find any reason to hold that the order of refixation dated 14.05.2019 is patently erroneous, warranting interference. Thus, the Tribunal's exercise of interfering with such order of refixation correcting the mistake is not justifiable and not in consonance with the settled principles. Thus, we are inclined to interfere with the impugned order passed by the Tribunal.

14. Accordingly, the order passed by the first respondent/Central Administrative Tribunal, Chennai Bench in O.A.1120/2019 is set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] [M.J.R., J.]
16.12.2024

Index: Yes/No

Speaking/Non-speaking order

mrp

1. The Registrar,
Central Administrative Tribunal Madras,
Bench High Court Building, Chennai- 104.
2. The Public Prosecutor,
High Court of Madras.



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S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

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