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W.P.No.5350 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.5350 of 2023
and
W.M.P.No.5372 of 2023

V.Vasuki

... Petitioner

Vs.

1.The Registrar General,
High Court of Judicature,
High Court Madras,
Chennai – 600 104.

2.The Principal District Judge,
Namakkal,
Namakkal District.

3.The Chief Administrative Officer,
District Court, Namakkal,
Namakkal District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent impugned order in R.O.C.No.13577/A/2022 dated 14.11.2022 and the consequential proceedings in R.O.C.No.16044/A/2022 dated 16.12.2022 and quash the same and consequently direct the respondents to continue to pay the salary and the pensionary benefits of the



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petitioner as had been fixed taking into account the date of entry into service as 27.03.1991 and also to refund the recovered excess salary amount for the month of December 2022.

For Petitioner : Mrs.Dakshayani Reddy
for P.Rajavel

For Respondents : Mr.V.Vijay Shankar

ORDER

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

The order of refixation and consequential recovery passed by the learned Principal District Judge, Namakkal in proceedings dated 14.11.2022 is sought to be quashed in the present writ proceedings.

2. The petitioner was originally appointed as Steno-Typist and she was ousted from service on 12.03.1990. The petitioner was further appointed as Steno-Typist on temporary basis by the learned Judicial Magistrate-III, Tirupattur, NorthArcot District on 27.03.1991.The petitioner admittedly continued as a temporary Steno-typist till the year 1997, when her services was confirmed. The probation was declared in the year 1999.

3. Learned Senior Counsel appearing on behalf of the petitioner



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would submit that 5% personal pay granted by the Government in the 5th Pay Commission was paid to the petitioner all along. Based on the audit objections raised by the High Court Audit Wing, pay revision was effected and recovery has been imposed. Thus, the petitioner has chosen to file the present writ petition.

4. It is not in dispute that 5% Personal Pay was granted, while implementing the 5th Pay Commission with effect from 01.05.1998, to rectify pay anomaly to certain categories. Therefore, the employees falling under the categories as stipulated in G.O.Ms.664 alone are entitled to draw the benefit of 5% personal pay. In the present case, the learned Senior Counsel for the petitioner would submit that the benefit of 5% personal pay was granted to the writ petitioner, which was subsequently objected by the Audit Wing of High Court.

5. Learned Counsel for the respondent would oppose by stating that 5% personal pay was erroneously granted to the writ petitioner. Noting the fact that she was not eligible for such benefit, as per the Government Orders,



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further orders were issued to re-fix the correct pay.

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6. The objections raised by the Audit Wing of the High Court were found based on the Government Orders. Therefore, the pay admissible to the petitioner was revised, in accordance with the Pay Rules and the Government Orders in force. Thus, the respondents have not committed any infirmity, since the petitioner is not eligible to draw 5% personal pay.

7. Since the rectification of pay anomaly was implemented in the year 1998 and the petitioner was appointed first time in the Judicial Department in the year 1991, on temporary basis and her services were confirmed in the year 1997. Therefore, she is entitled for the benefit of 5% personal pay as rightly objected by the Audit Wing of the High Court. However, the petitioner was drawing the said amount of 5% personal pay long years and now she has attained the age of superannuation. Thus, any recovery at this length of time would result in hardship to the employee. The Apex Court and High Courts time and again held that recovery of excess pay cannot be made in respect of Group-III and Group-IV employees and more so, after attaining the age of attaining superannuation.



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8. By applying the said principles, we are inclined to set aside the recovery alone. The pay as fixed by the respondents in accordance with the Pay Rules and Government Orders shall continue. If any amount has already been recovered, the respondents are directed to refund the excess salary recovered from the petitioner within a period of 12 weeks from the date of receipt of a copy of this order. Accordingly, the revised fixation done by the respondents stands confirmed.

9. It is brought to our notice that the terminal and pensionary benefits due to the petitioner have not been settled. The respondents are directed to initiate all appropriate actions to settle the terminal and pensionary benefits including the pension arrears due to the petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

10. With the above directions, the Writ Petition stands disposed of.



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No costs. Consequently, connected miscellaneous petition is closed.

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[S.M.S.J.] [K.R.S.J.]
15.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

- 1.The Registrar General,
High Court of Judicature,
High Court Madras,
Chennai – 600 104.
- 2.The Principal District Judge,
Namakkal,
Namakkal District.
- 3.The Chief Administrative Officer,
District Court, Namakkal,
Namakkal District.

S.M.SUBRAMANIAM,J.
AND
K.RAJASEKAR,J.



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Order in
W.P.No.5350 of 2023

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