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W.P.No.6899 of 2021

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.6899 of 2021

and

W.M.P.Nos.7448 & 7449 of 2021

K.Srimathi

... Petitioner

Vs.

1. The Chief Metropolitan Magistrate,
Egmore, Chennai -03.

2. The Metropolitan Magistrate -III,
George Town, Chennai 01.

3. The Accountant General,
Teynampet, Chennai -18.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records in connection with the impugned order of recovery passed by the 2nd respondent in ROC No.39 / 2020 - A dated 07/02/2020 and the consequential downward revision order passed by the 3rd respondent in No.AG (A and E) PEN PO2 / 10226170 /1 RO222844 /167 dated 02/11/2020 and to quash the same.



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For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.B.Vijay (for R1 & R2)

Mrs.Hema Murali Krishnan (for R3)

ORDER

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

The *lis* on hand has been instituted questioning the validity of the re-fixation of pay and the consequential recovery imposed on the writ petitioner in proceeding dated 07.02.2020 and the consequential revision of pay issued in proceeding dated 02.11.2020.

2. The petitioner was initially appointed to the post of Reader on 19.08.1998 in Tamil Nadu Judicial Ministerial Services. She was promoted to the posts of Junior Assistant, Assistant, Bench Clerk Grade-II and finally, to the post of Interpretor to the Chief Metropolitan Magistrates Court at Chennai.

3. The petitioner made a representation to the authorities seeking revision of pay scale based on G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010. Since it was not considered, the petitioner



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filed W.P.No.12374 of 2018. The Hon'ble Division Bench of this Court passed final orders on 05.06.2018 in W.P.No.12374 of 2018, directing the respondents therein to look into the representation submitted by the petitioner on 04.11.2017 and pass appropriate orders.

4. Pursuant to the representation and based on the directions issued by the High Court to consider the representation, the Chief Metropolitan Magistrate, Egmore, Chennai, passed an order in proceeding dated 14.08.2018, revising the scale of pay of the petitioner based on G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010. Pertinently, while granting revision of pay in proceeding dated 14.08.2018, the authority competent imposed a condition that "The individual is informed that if the pay fixation is found to be incorrect or in excess in future, the entire amount drawn in excess will be recovered in one lump sum".

5. The Audit Wing of the High Court raised an objection regarding the revision of pay effected in favour of the petitioner based on the G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010. Based on the audit objection, a Show Cause Notice was issued to the writ



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petitioner, seeking her explanations and to provide an opportunity to her.

The petitioner submitted a representation. Finally, the respondent passed the impugned order in proceeding dated 07.02.2020, cancelling the fixation done in proceeding dated 14.10.2018. Consequential, recovery order has also been passed. Thus, the present writ petition came to be instituted.

6. The learned counsel for the petitioner, Mr.S.Sivakumar would submit that the petitioner submitted a representation to implement G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010, by extending the benefit of revised scale of pay since she was promoted to the post of Interpreter. The revised scale of pay for the post of Interpreter was Rs.15600-39100+5400 G.P. (Grade Pay). It is not in dispute that the petitioner was promoted to the post of Interpreter from the post of Bench Clerk Grade II. Since the Government ordered revision of pay for the post of Interpreter, the case of the petitioner was considered and thus, there is no infirmity. The reason stated in the order impugned regarding the objection is untenable. The reason stated that the revision effected in accordance with the G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010, to the High Court employees is also incorrect since,



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G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010

stipulates that the revision of scale of pay is applicable to the employees other than High Court. Thus, the writ petition is to be considered.

7. The learned counsel for the respondents 1 & 2, Mr.B.Vijay, would oppose by stating that the Government Order issued in G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010 is applicable only to the High Court employees working in the cadres of: No.1: Private Secretary, No.2: Interpreter, No.3:Overseer. An inference can be drawn that the post of Private Secretary and Overseers are not available in the District Judiciary, thus, the word “other than High Court”, stated in the Government Order is made inadvertently and it is to be read as “applicable to High Court”. Since because an erroneous mentioned has been made in the Government order, the petitioner cannot take undue advantage seeking revision of scale of pay applicable to the post of Interpreter in the High Court.

8. It is further stated that the revision was effected based on the representation submitted by the petitioner. She filed a writ petition in W.P.No.12374 of 2018 and the High Court directed the authorities to



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consider the same. Since a doubt arose, the Chief Metropolitan Magistrate revised the scale of pay with a condition that if the pay fixation is found to be incorrect or in excess in future, the entire amount drawn in excess will be recovered in one lump sum. Therefore, the revision was effected at the instance of the petitioner and not by the establishment based on G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010.

9. In order to get a clear position, the Registrar General High Court requested the Government to clarify the scope of G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010. The Government in letter No.74308/Cts.V/2010-2, dated 19.10.2010, clarified the scope of G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010 as follows:

I am directed to invite your kind attention to the reference second cited where in a clarification sought for as to whether the orders issued in the G.O. first cited for the revision of scale of pay for the post of interpreters and overseers, may be applicable to the High Court Service.

2. In this connection I am directed to clarify that the revision of scale of pay for the post of Private



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Secretary in the G.O.first cited relates to the posts in the Government litigations department and in the case of interpreters and overseers it relates to the posts in High Court of Madras and its Madurai Bench.

3. I am therefore directed to inform you that the orders issued in the G.O. first cited revising the scale of pay of Interpreters and overseers based on the recommendations of the one man commission 2010 is applicable only to the posts in High Court Service.”

10. We have considered the issues. It is not in dispute that the petitioner was appointed as Reader and thereafter, promoted to the posts of Junior Assistant, Assistant, Bench Clerk Grade II, and finally to the post of Interpreter. It is further not in dispute that the petitioner submitted a representation seeking revision of pay based on G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010. It was not considered initially. The petitioner filed W.P.No.12374/2018. The Hon'ble Division Bench of this Court directed the Authorities to consider and pass orders. Consequently, the Chief Metropolitan Magistrate revised the scale of pay as applicable to the post of Interpreter to the High Court as per G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010. However, the learned Chief Metropolitan Magistrate Egmore, imposed a



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condition that if the fixation is found to be incorrect or in excess in future, the entire amount drawn in excess will be recovered in one lump sum.

Thus, the petitioner accepting the condition stipulated in the revision order dated 14.08.2018, received the revision of scale of pay. Now she cannot turn around and say that the fixation cannot be revised and recovery cannot be made by relying on the ratio laid down in the case of ***Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334*** by the Apex Court. Such a stand by the petitioner is unacceptable in view of the fact that at the time of effecting revision, the petitioner accepted the condition that in the event of any excess pay, she agreed for recovery of the same in one lump sum.

11. The learned counsel for the petitioner reiterated that the ratio laid down in the case of ***Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334***, is to be considered. In this regard, the respondents relied on the judgement of the Hon'ble Supreme Court in the case of ***High Court of Punjab and Haryana and others vs. Jagdev singh reported in 2016 14 SCC 267***, wherein the Hon'ble Supreme Court made following observations:



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“9. The submission of the respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the State. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the respondent was clearly on notice of the fact that a future refixation or revision may warrant an adjustment of the excess payment, if any, made.

...

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

10. Perusal of G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010, reveals that the said G.O. is applicable to the cadres in



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the High Court. An inference is to be drawn in view of the fact that the other two categories namely Private Secretary and Overseers posts are available only in the High Court and not in the District Judiciary. Therefore, the Government order in G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010 was extended only to three categories in the High Court Services, that is Private Secretary, Interpreters and Overseers. Other interpretation is not possible because the post of Private Secretary and Overseers are not available in the District Judiciary. The said position is clarified by the Government in letter no.74308/Cts. V/2010-2, dated 19.10.2010. Therefore, the petitioner is not eligible for revision of scale of pay based on G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010. Since the petitioner has already accepted the terms and conditions stipulated in the revision order dated 14.08.2018, that in the event of any excess amount drawn, the same shall be recovered in one lump sum, now she cannot turn around and say that the principles laid down in the case of ***Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334*** is to be followed. Pertinently, the cadre of Interpreter falls under Group-B Services and therefore, the petitioner is not entitled for the relief.



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11. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,)

(K.R.S.J.,)

05.03.2024

Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

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