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W.P.No.35205 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.35205 of 2015 and
M.P.No.1 of 2015 and
W.M.P.No.1341 of 2017

R.Govindasamy

... Petitioner

Vs

1.The State rep. by
The Secretary to Government,
Department of Home (Prisons),
Secretariat, Fort St.George,
Chennai 09.

2.The Inspector General of Prisons cum
Additional Director General of Prisons,
Department of Prisons,
Thalamuthu – Natarajan Maligai,
Egmore, Chennai 08.

3.The Superintendent of Prisons,
Central Prisons of Trichy,
Trichy 20.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records made in impugned order No. 21098/KISIU/2015 dated 22.07.2015 on the file of third respondent herein and quash the same as illegal.



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For Petitioner : Mr.Ilayaraja Kandasamy

For Respondents : Mr.Stalin Abimanyu,
Additional Government Pleader.

ORDER

The writ petition has been filed challenging the order of the third respondent dated 22.07.2015 whereby the pay was re-fixed with effect from 01.07.2006 and also for recovery of the excess Pay and Dearness Allowance paid from 01.01.2007.

2. It is the case of the petitioner that he was appointed as a Warden of Prisons Department on 18.10.1983, thereafter promoted as Grade I Warden No.II on 24.01.2005 and further he was promoted to Chief Head Warden on 18.01.2015. The petitioner had retired from service on 31.08.2015. The petitioner and his colleague, one Natarajan, got promotion on 18.01.2015 however, there was a difference in pay scale between them, even though they were in same cadre. It is the grievance of the petitioner that even though one Selvaraj was junior to him, the pay scale was equally fixed. Subsequently, the third respondent by the impugned order, relied on one-man commission report and had reduced the pay scale of the petitioner. Thereby, the petitioner has preferred the



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present writ petition.

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3. Mr.Stalin Abhimanyu, learned Government Pleader appearing for the respondents relying upon the averments in the counter affidavit submitted that the pay scale of the petitioner was fixed by taking into account the date of promotion in respect of several other persons including petitioner. Subsequently, the authorities had considered the correct date of promotion and accordingly fixed the corresponding pay scale. In view of the above, the rectification of the pay anomaly with effect from 01.01.2006 was made pursuant to G.O.Ms.25 Personnel and Administrative Reforms (FR.IV) Department dated 23.03.2015. The pay scale fixed by the petitioner was revised and the excess amount paid pursuant to the re-fixation has been sought to be recovered and therefore it is perfectly justified.

4. Further, in paragraph 5 of the counter affidavit, it is explained how the re-fixation has been done and in pursuant to the re-fixation with effect from 01.07.2006, it has been calculated that a sum of Rs.66,638/- has been excessively paid including Dearness Allowance for the period from 01.01.2007 to 31.08.2015 and the same is sought to be recovered



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from the DCRG amount. In paragraph 3 of the counter affidavit, the respondents have furnished the details in respect of the re-fixation of the petitioner. The relevant paragraph is extracted hereunder:

“5. With regard to the averments made in paragraph 5 and 7 of the affidavit, it is submitted that the petitioner's pay fixed on par with Tr.M.Selvaraj, Grade I Warder as per the Superintendent of Prisons, Central Prison, Trichy Proceedings No.15958/SJA/2009 dated 21.12.2009 in the new pay commission scale of pay of Rs.5200-20200+ Grade Pay Rs.2800 with effect from 01.07.2006 which is not in order and directed to revise the fixation of pay by the Accountant General, Chennai similar to that of a case of Tr.G.Ramachandran, Grade I Warder who voluntarily retired on 31.05.2010 while sending the pension proposal and hence the pay of Tr.M.Selvaraj, Grade I Warder was revised with effect from 01.01.2006 taking into account the new scale of pay of Rs.5200-20200+Grade Pay Rs.2600 since the incumbent was in the post of Grade II Warder (Special Grade) as on 01.01.2006. Accordingly, revised proceedings issued in No.8698/G1/2015 dated 29.06.2015 of the Superintendent, Central Prison, Trichy and the excess paid pay and Dearness Allowance for the period from 01.03.2011 to 30.06.2015 arrived @ Rs.29136/- being recovered from his pay for the month of July 2015 onwards. Likewise, the pay of Tr.K.Natarajan, Chief Head Warder revised with effect from 01.07.2006 taking into account the new scale of pay of



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Rs.5200-20200+Grade Pay Rs.2600 since the incumbent was in the post of Grade II Warder (Special Grade) as on 01.01.2006. Accordingly, revised proceedings issued in No.8698/G1/2015 dated 10.07.2015 by the Superintendent, Central Prison, Trichy and the excess paid Pay and Dearness Allowance for the period from 01.03.2011 to 30.06.2015 arrived @ Rs.26558/- being recovered from his pay for the month of July 2015 onwards. In the same manner, the petitioner's pay re-fixed with effect from 01.07.2006 and the excess paid Pay and Dearness Allowance for the period from 01.01.2007 to 31.08.2015 arrived @ Rs.66638/- and recovered from the DCRG amount. Therefore, the contention of the petitioner that the excess recovery made for his case only is not correct and unacceptable.”

5. Heard both sides. Perused the material available on record.

6. Though the petitioner has not substantiated any irregularities or error in the re-fixation of the pay scale made in favour of the petitioner, it is evident from the impugned order that a sum of Rs.66,638/- is sought to be recovered from DCRG amount pursuant to the re-fixation. This pay and the Dearness Allowance have been paid to the petitioner by the respondents based on their own calculations and not due to any misrepresentation or fault on the part of the petitioner.



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7. It is also a settled position that any amount paid in excess due to wrong calculations by the respondents cannot be recovered from an employee who has retired or is due to retire within a year. In this regard, the Hon'ble Supreme Court in the case of *State of Punjab v. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334 had held that the recovery of any amount from an employee who has retired or is due to retire within a year is impermissible. The relevant portion of the judgment is extracted hereunder:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.



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(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

8. Admittedly, in this case, the petitioner has superannuated on 31.08.2015 and the impugned order re-fixing the pay scale has been issued on 22.07.2015 within one year prior to the date of superannuation of the petitioner. In view of the impugned order pertaining to recovery at the verge of retirement, the above referred decision in *White Washer* case is squarely applicable to the facts of this case. Further, in view of the above decision, recovery cannot be made in respect of any payments made in excess of five years.

9. In light of the above, while sustaining the impugned order in respect of re-fixation of the pay scale, the portion of the order directing the recovery of the excess amount paid alone shall stand quashed. In the



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event that the respondents have acted upon this order and made any recovery, the same shall be repaid to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

10. In view of the above, the writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Speaking (or) Non Speaking Order

Index : Yes/ No

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Chennai 09.
- 2.The Inspector General of Prisons cum
Additional Director General of Prisons,
Department of Prisons,
Thalamuthu – Natarajan Maligai,
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G.ARUL MURUGAN, J.

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