IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.7933 of 2022

N.Devika ... **Petitioner**

Vs.

1.The Secretary to Government
Government of Tamil Nadu
Finance Pay Cell Department
Secretariat Building
Chennai – 600 009.

2.The Principal Accountant General (A&E)
Office of the Principal Accountant General (A&E)
361, Anna Salai, Teynampet
Chennai – 600 018.

3.The Additional Director General of Police (Intelligence)
Office of the Director General of Police
Chennai – 600 004. ... **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the impugned order issued by the 3rd respondent in Rc.No.B2/Sec/0911/2020 &

D.O.No.37/2022 dated 19.02.2022 and quash the same and direct the 3rd respondent to refund the excess salary of Rs.8,68,630/- recovered from the petitioner with interest and to restore the pay scale of Rs.17580+5400 in the Pay Band of Rs.15600-39100 + 5400 by applying the Rule 4 (1) (i) (iii) of the Tamil Nadu Revised Pay Rules 2009 by granting 4 increments for every two stages bunched from 12.12.2007 notionally and monetary benefit from 01.08.2010 and calculate the pension and other terminal benefits from the last drawn salary of Rs.95,500/- in the Pay Level-22, Cell (19) as accrued thereon within a time frame.

For the Petitioner : Ms.G.Kiruthika

For the Respondents : Mr.Stalin Abhimanyu
Additional Government Pleader
for RR1 & 3
Mrs.Hema Muralikrishnan
for R2

ORDER

This Writ Petition is filed challenging the impugned order dated 19.02.2022 whereby the petitioner's pay was downwardly revised and it was ordered that the petitioner should refund the excess salary of Rs.8,68,630/-.

2. Heard, *Ms.G.Kiruthika*, the learned counsel appearing on behalf of

the petitioner, *Mr.Stalin Abhimanyu,* learned Additional Government Pleader appearing on behalf of the respondents 1 and 3 and *Mrs.Hema Muralikrishnan,* learned counsel appearing on behalf of the 2nd respondent.

3. The contention of the learned counsel for the petitioner is that originally the petitioner was in the scale of pay of Rs.5500 - 175 – 9000/-. Accordingly, when this pay was fixed as per Schedule - 1 of the Tamil Nadu Revised Scales of Pay Rules, 2009, the revised pay was Rs.9300 – 34800/- in pay band - 2 in the grade pay of Rs.4400/-. Accordingly, the petitioner's pay was fixed at Rs.9300 – 34800/- in the grade pay of Rs.4800/-. When the selection grade pay was granted, the correspondence selection pay scale and grade pay was Rs.15600 – 39100/- + Rs.5700/-. Thereafter, considering the scale of pay allowed to the promotional post, the grade pay was restricted to Rs.5400/-. Therefore, when the further exercise of additional refitment vide Table-15 prescribed vide letter dated 15.09.2010 was to be carried out, the petitioner's existing stage was in Rs.8125/- and therefore, he would fall under Row No.9 and correspondingly, the scale of pay, to which, the

petitioner should have been fitted was to be at Rs.17580/- with the revised basic pay at Rs.22980/-.

4. However, since the respondents chose to fix the basic level i.e., in the Level-I at pay band of Rs.15600/- and revised pay of Rs.21100/-, the same results in bunching of atleast 8 stages to the petitioner. In such case, as per Rule-4(iii) of the Tamil Nadu Revised Scales of Pay Rules, 2009, atleast four advance increments should be granted to the petitioner to reduce the effect of such bunching. If that is done, there is no question of downward revision of the pay of the petitioner which was originally correctly fixed.

5. The learned counsel would also rely upon the judgment of the Hon'ble Division Bench of this Court in the ***Principal Secretary to Government and Others Vs. Dr.K.S.Gamal Abdul Nasser***[1]**,** more specifically to paragraph 4 of the said judgment. The learned counsel would also submit that in any event no recovery can be resorted to from the petitioner in view of the judgment of the Hon'ble Supreme Court in ***State of***

1 (2017) SC Online Mad 22605

Punjab Vs. Rafiq Masih (White Washer's case)[2].

6. Per contra, *Mr.Stalin Abhimanyu,* learned Additional Government Pleader appearing for the respondents relying upon the counter affidavit would submit that the excess pay has been made towards the salary of the petitioner, which was a mistake while carrying out the pay fixation. In paragraph No.10 (ii), details of pay fixation and what should be the correct fixation is given as follows:-

> "(ii) The details of fixation of the pay of the petitioner and the correct pay as per the orders in force is as follows:-

Date	***G.Os/Govt. Lr.***	***Scale of Pay***	***Pay Fixation as per Service Book***	***Correct Fixation based on G.O.***
31.12.2005	G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998	Rs.6500-200-10500	Rs.7300 + 125 (SGPP) + 301 (5% PP)	Rs.7300+125(SGPP)+301 (5%PP)
01.01.2006	G.O.Ms.No.234, Finance (Pay Cell)Department 01.06.2009	Rs.9300-34800 + GP4600	------------	Rs.7300+125(SGPP)+301 (5%PP)
01.04.2006			Rs.7500+125+301	Rs.7500+125 (SGPP) + 301 (5%PP)
01.04.2007			Rs.7700+125+301	Rs.7700+125 (SGPP) + 301 (5%PP)

2 (2015) 4 SCC 344

Date	*G.Os/Govt. Lr.*	*Scale of Pay*	*Pay Fixation as per Service Book*	*Correct Fixation based on G.O.*
11.12.2007	G.O.Ms.No.240, Finance (Pay Cell)Department 22.07.2013		Rs.7700+426=8126/-	Rs.8126*1.86 =15114/- (Round off Rs.15120/-)
12.12.2007	Government Letter No.51082, Finance (Pay Cell) 2010-1 dated 15.09.2010		Rs.17580+ GP5400/-= Rs.22980/-	-------------
12.12.2007	G.O.Ms.No.309, Finance (Pay Cell) Department dated 26.08.2010 and Government Letter No.63305, Finance (Pay Cell) 2010-5 dated 30.11.2010	Rs.15600-39100 + GP 5400	-----------	Rs.15600 + GP 5400 = Rs.21000/-
01.04.2008			Rs.18270+ GP 5400 (Rs.23670/-)	Rs.16230 + GP 5400 (Rs.21630/-)
01.04.2009			Rs.18980 + GP 5400 (Rs.24380/-)	Rs.16880 + GP 5400 (Rs.22280/-)
01.04.2010			Rs.19720 + GP 5400 (Rs.25120/-)	Rs.17550 + GP 5400 (Rs.22950/-)
01.04.2011			Rs.20480 + GP 5400 (Rs.25880/-)	Rs.18240 + GP 5400 (Rs.23640/-)

”

Further, it is stated in paragraph No.14 as follows:-

> “14.With reference to the averments made in the Ground (B) of the affidavit, it is submitted that there is

> error in the fixation of pay ordered in respect of the petitioner vide C.No.AI/Sec/7885/2013, D.O.No.356/Sec/2014 dated 08.05.2014 of the Superintendent of Police, Security Branch CID, Chennai and subsequent pay fixations in C.S.G.O.No.198/2014 dated 20.06.2014 of the Superintendent of Police, Coastal Security Group have been brought to light by the Office of the Principal Accountant General (A&E), Chennai while verifying the pension proposal of the petitioner. Immediately, action has been taken to rectify the erroneous fixation. Hence, re-fixation of pay was ordered vide D.O.No.278/2021, C.No.A1/Sec/0911/2021 Dated 02.07.2021 and the overdrawn pay and allowances of Rs.8,68,630/- was ordered to be recovered from the Death Cum Retirement Gratuity of the petitioner vide D.O.No.37/2022 in C.No.B2/Sec/3180/2020 dated 19.02.2022."

7. Therefore, when the previous pay fixation was brought to light, the impugned order has rightly been passed.

8. The learned counsel for the 2nd respondent would submit that it is for the respondents 1 and 3 to take a decision and the error has been pointed by them in this regard.

9. I have considered the rival submissions made on either side and

perused the material records of the case.

10. It can be seen that even as per the table which is extracted above, the error which was alleged in respect of pay fixation has occurred with effect from 12.12.2007. According to the respondents, fixation of pay at Rs.17,500/- + GP 5,400/- at Rs.22,900/- was erroneous and therefore they are correcting the same at Rs.15,600/- + GP 5400/- at Rs.21,000/-. In this regard as rightly pointed out by the learned counsel for the petitioner, it can be seen that the additional fitment table issued vide letter dated 15.09.2010, while, the petitioner placed under Stage – 9, the respondents are now re-fixing at Stage – 1.

11. As rightly contended by the learned counsel for the petitioner, it is no doubt true that the appropriate revised pay band and grade pay will be Stage -1 only. However, if such a fixation results in pay of two or more consecutive stages in the existing scale getting bunched in the revised pay structure for every two stages so bunched, the benefit of one increment shall

be given so as to avoid bunching of more than two stages of revised pay bands. The Rule 4 (3) of the Tamil Nadu Revised Scales of Pay Rules, 2009, is extracted hereunder:-

> "If the pay fixed in the officiating post under sub-rule(1) is lower than the pay fixed in the substantive post, it shall be fixed at the state next above the substantive pay. Where the pay of Government Servant who has moved from a lower post to a higher post or from an Ordinary Grade to a Selection Grade is fixed at a stage lower than that would have been admissible in the lower post or the Ordinary Grade (if he is in the Selection Grade post) his pay shall be stepped up to the stage equal to the pay in the lower post or grade, or if there is no such stage to the next higher stage, provided that this will apply only to Government Servant who have actually moved to the higher or selection grade post from the lower or ordinary Grade post. "

12. Therefore, when the petitioner's pay is bunched by eight stages, the pay has to be fixed granting four advance increment and if the same is calculated then the original pay fixation of the petitioner is correct and the exercise now done by the respondents is erroneous. The objection raised by the Accountant General as well as the exercise carried out by the respondents is without considering the said Rule 4 (iii)) of the Rules.

13. In that view of the matter, the Writ Petitioner is bound to succeed and the Writ Petition stands allowed on the following terms:-

(i) The impugned order dated 19.02.2022 bearing RC.No.B2/Sec/0911/2020 and D.O.No.37/2022 stands quashed;

(ii) The respondents are directed to disburse the sum of Rs.8,68,630/- or any such amount as may be withheld by them, within a period of twelve weeks from the date of receipt of a copy of this order;

(iii) The respondents also consequently refix the petitioner's pension as per the original last drawn pay and the said exercise shall be carried out within a period of 12 weeks from the date of receipt of a copy of this order.

(iv) No costs.

27.06.2024

Neutral Citation : Yes
Jer
To
1.The Secretary to Government
Government of Tamil Nadu
Finance Pay Cell Department
Secretariat Building
Chennai – 600 009.

2.The Principal Accountant General (A&E)
Office of the Principal Accountant General (A&E)
361, Anna Salai, Teynampet
Chennai – 600 018.

3.The Additional Director General of Police (Intelligence)
Office of the Director General of Police
Chennai – 600 004.

D.BHARATHA CHAKRAVARTHY, J.

Jer

W.P.No.7933 of 2022

27.06.2024