



W.P.No.12046 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

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CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No.12046 of 2024
and
W.M.P.No.13152 of 2024

S.Varadharajan

... Petitioner

Vs.

1. The Secretary to Government,
Home (Courts-V) Department,
Fort St.George, Chennai - 9.
2. The Registrar General,
Madras High Court, Chennai - 104.
3. The Principal District Judge,
Cuddalore District, Cuddalore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating the 3rd respondent proceedings issued in D.No.11363/2022 dated 15.12.2022, the consequential letter dated 16.08.2023 with respect to recovery proceedings and the impugned order passed by the 3rd respondent in



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D.No.8948/2023 dated 30.11.2023, quash the same and direct the respondents to regularize the petitioner's service from the date of joining in the post of Typist namely 27.08.2007 with all consequential service and monetary benefits and further direct the respondents to settle the retirement benefits of the petitioner within a reasonable time.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

For R1 : Mr.R.Neelakandan
Additional Advocate General
Assisted by
Mr.S.John J.Raja Singh

For R2 & R3 : Mr.A.Balaji
for Mr.B.Vijay

ORDER

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

The writ petitioner is a retired employee served in the Judiciary. The Internal Audit Wing of Madras High Court raised an audit objection stating that the pay admissible to the petitioner was erroneously fixed in the year 2007. Along with the audit slip, notice was issued to the petitioner by affording opportunity. The petitioner submitted his objections, which were



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considered by the learned Principal District Judge, Cuddalore. The order impugned was passed refixing the pay as admissible to the petitioner as per the pay Rules and Government Orders in force. Consequently, the excess salary paid for the period from 09.07.2009 to 31.10.2022 is directed to be recovered.

2. Mr.K.Venkataramani, learned Senior Counsel appearing on behalf of the the petitioner would submit that the recovery of excess salary from the retired employee would result in hardship. The petitioner is not responsible for wrong fixation of pay in the year 2007. There is no misrepresentation on the part of the petitioner. The petitioner has not given any undertaking at the time of effecting revision of pay. Thus, the petitioner cannot be held responsible. Even in respect of revision of pay, the petitioner raised his objection and submitted explanations, which were not considered. Thus, the present writ petition came to be instituted.

3. Mr.A.Balaji, learned Counsel appearing on behalf of the respondents 2 and 3 would oppose by stating that the revision of pay was effected based on the Audit Objection raised by the Internal Audit Wing of



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the High Court. The error crept-in, in the fixation was identified and it is a rectification of error, which cannot be faulted. Therefore, the writ petition is to be rejected.

4. Undoubtedly, the Authorities competent are empowered to correct the errors/mistakes crept-in, if any in the pay fixation. Therefore, we do not find any reason to interfere with the re-fixation of pay made by the respondents in accordance with the pay Rules and Government Orders in force. No employee is entitled to get excess salary more than the admissible salary, which would result in unjust gain. The public money cannot be paid in excess to the employees. Therefore, the petitioner is entitled for the pay as admissible to him and as per the Government orders in force. Thus, the re-fixation of pay effected by correcting the error stands confirmed.

5. Regarding the recovery of excess salary, we find that there is a force in the arguments as advanced by the learned Counsel for the petitioner. The petitioner is retired from service. Recovery of such huge amount from the retired employee would result in hardship and he may not be in a position to meet out his day to day expenses including medical expenses etc., Therefore,



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we are inclined to interfere with the recovery of excess salary alone.

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6. Accordingly, the revision of scale of pay/refixation made by the respondents stands confirmed. The recovery of excess salary alone is set aside. Since the pay has been corrected and refixed, the respondents are directed to settle all the terminal benefits within a period of three (3) months from the date of receipt of a copy of this order.

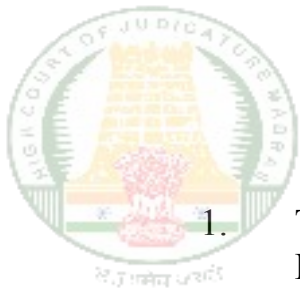
7. Accordingly, the Writ Petition stands **partly allowed**. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] [C.K., J.]
27.06.2024

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Order in
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