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W.P.No.8405 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.06.2024**

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

W.P.No.8405 of 2024
and
W.M.P.Nos.9364 and 9366 of 2024

S. Sridharan S/o. Selvaraj

... Petitioner

Vs.

1. The Registrar General,
High Court, Chennai-104.
2. The Principal District Munsif,
Cuddalore.
3. The Special Judge,
Special Sub-Court for MCOP cases,
Cuddalore.
4. The Principal District Judge,
Cuddalore.
5. The Secretary to the Government,
Home (Courts) Department,
Secretariat, Fort St. George, Chennai-9.

... Respondents



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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 respondents in connection with the impugned order passed by the 2nd respondent in D.O. No.312/2023 dated 11.09.2023 addressing to the 3rd respondent, ordering of refixation of pay and recovery of Rs.7,83,945/- from the petitioner, based on the impugned Audit para objection issued by the Hon'ble High Court, Audit in ROC. No.105514/A/2022/IAW dated 26.07.2023 and quash the same and direct the respondents to fix the salary of the petitioner at Rs.72,700/- as on 01.04.2023 and grant him all consequential service and monetary benefits.

For Petitioner : Mr. K. Venkatramani, Senior Counsel
for Mr.M. Muthappan

For Respondents : Mr. K. Umesh Rao [for R1 to R4]
Mr. D. Gopal, Government Advocate
[for R5]

ORDER

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

The writ on hand has been instituted questioning the validity of the audit objection raised by the Audit Wing, which was communicated by the learned Principal District Munsif, Cuddalore to the learned Special Judge, Cuddalore.



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2. Learned Counsels appearing on behalf of the respondents would raise a preliminary objection that the writ petition is not maintainable, in view of the fact that no recovery order has been passed. Inter-departmental communication would not provide a cause for institution of writ proceedings. Thus, the writ petition is to be rejected.

3. Mr.K.Venkatramani, learned Senior Counsel for Mr.M.Muthappan, appearing on behalf of the petitioner would submit that objections were received from the petitioner based on the audit objection. Therefore, the cause arose. Once the objections are submitted by the petitioner/employee and the Authorities have not considered the objections submitted for recovery of the excess salary paid from the year 1998, the writ petitioner could able to establish a cause and the writ petition is entertainable.

4. We are of the considered opinion that audit objection has been raised, admittedly. As per the audit objections, the pay fixation made in the year 1998 was found erroneous and consequently, the Authorities are asked to recover the excess salary paid to the writ petitioner. Thereafter, the petitioner submitted an objection. The objection is pending before the learned Principal



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District Judge for consideration and to pass an order. Admittedly, the learned Principal District Judge, Cuddalore has not passed orders. However, we are not inclined to drive the petitioner to go back to the Authorities, which would result in multiplicity of litigation. In the event of passing an order of recovery, the petitioner would be back again by filing another writ petition before this court. In service matters, longevity of litigation would affect the carrier of the employees. Therefore, we are inclined to consider the case on merits.

5. The petitioner was appointed as Senior Bailiff on compassionate grounds, due to retirement of his father on medical invalidation grounds. Pay fixation was done by the Establishment based on the pay Rules and Government Orders in force. The audit objection reveals that an individual pay, on moving to the post of "**Selection Grade Junior Assistant**" as on 03.10.1998 has incorrectly been fixed at Rs.4,100 + 35PP+203PP in the pre-revised time scale of pay of Rs.4000-100-6000 taking into account combinedly the services rendered in the posts of Senior Bailiff for the period from 03.10.1988 to 01.07.1995 and in the post of Junior Assistant for the period from 18.01.1995 to 02.10.1998 and one promotional increment has



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also been sanctioned on moving from the post of Senior Bailiff to Junior Assistant as on 18.01.1995, considering that the Junior Assistant (Higher Post) is a promotional post to the feeder category post of Senior Bailiff (Lower Post) instead of pay to be correctly fixed at Rs.4050+203PP in the time scale of pay Rs.3200-85-4900.

6. The above fixation has been found to be erroneous, mainly on the ground that, the service rendered by the petitioner in the lower post cannot be reckoned for awarding selection grade in the higher post. Selection grade is to be granted, only if an employee has served 10 years of service in the same post and stagnated. The very purpose of granting Selection Grade, Special Grade and Super Grade is to grant next higher level of pay, in the event of stagnation of an employee in the same post. However, in the present case, the benefit of Selection Grade was granted by counting the services in the lower post of Junior Bailiff and the higher post of Junior Assistant. Thus, the audit objection was raised by the Audit Wing. Further, one increment on the promotional post was also granted. For all these reasons, audit objection was raised.

7. We do not find any infirmity in respect of the audit objection



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raised. Subsequently, further revision of pay has been done based on erroneous fixation. Therefore, the excess salary disbursed to the petitioner has been calculated and sought to be recovered.

8. Mr.K.Venkatramani, learned Senior Counsel would submit that the petitioner was further promoted to the higher post of Assistant and now serving as Head Clerk.

9. The respondents could not able to establish that there was misrepresentation on the part of the employee during the fixation of pay in the year 1998. Therefore, it was an error committed by the Establishment for which the petitioner cannot be penalised after a lapse of many years. More so, recovery of huge amount at this length of time would result in hardship to the employees. Therefore, we are inclined to set aside the recovery alone. However, fixation is to be corrected as per the pay Rules and Government orders in force. We do not find any infirmity in respect of the revision of pay effected as per the pay Rules and Government orders in force. Since there was a huge delay on the part of the Establishment in identifying the wrong fixation, we are inclined to set aside the recovery alone.

10. In view of the facts and circumstances, the revised pay fixation



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made in accordance with the pay Rules and Government Orders are confirmed and the recovery of excess salary already paid to the petitioner/employee alone is set aside.

11. In the result, this Writ Petition stands **allowed-in-part**. No costs.

Consequently, connected miscellaneous petitions are closed.

[S.M.S.J.] [C.K.J.]
05.06.2024

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

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