IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **04.03.2024**

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**
**AND**
**THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

**W.P.No.11010 of 2023**
**and**
**W.M.P.Nos.10902 & 10903 of 2023**

A.Periannan ... Petitioner

Vs.

1.The Registrar General,
High Court of Madras,
High Court Campus,
Chennai – 600 104.

2.The Principal Secretary to Government,
Home (Court V) Department,
Fort, Saint George,
Chennai – 9.

3.The Principal District Judge,
Dharmapuri.

4.The Principal Accountant General (A and E),
AG's Office (Audit) Complex,
Anna Salai,
Roast Revor Garden,
Teynampet,
Chennai – 600 018.

5.The District Treasury Officer,
Dharmapuri. ... Respondents

**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 3rd respondent in connection with proceedings ROC.No.03/SA/2022 dated 29.07.2022 and quash the same and direct the respondents to return amount that had been recovered from the petitioner.

| | | |
|---|---|---|
| For Petitioner | : | Mr.A.Sakthivel |
| For R1 and R3 | : | Mr.V.Ayyadurai<br>Senior Counsel<br>for Mr.A.Durai Eswar |
| For R2 and R5 | : | Mrs.P.RajaRajeswari<br>Government Advocate |
| For R4 | : | Mr.V.Vijay Shankar |

## ORDER

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

The order of recovery to recover the excess salary paid to the writ petitioner is sought to be quashed in the present writ proceedings.

2. The petitioner was retired from service as Senior Bailiff in the Judicial Department on 31.07.2022. He was initially appointed as Dalayat on

31.03.1996 and promoted to the post of Senior Bailiff on 22.09.2008, beyond the cut off date fixed for grant of one increment i.e., from 01.04.2003 to 31.12.2005. In other words, the petitioner was promoted to the post of Senior Bailiff after 31.12.2005.

3. In Government Letter dated 29.03.2012, Clarification No.1 stipulates that "the benefit of one increment granted to the individuals is applicable to those appointed between 01.04.2003 to 31.12.2005. Fixing of cut off date has been recognised by the Hon'ble Supreme Court in financial matters and the ratio laid down are as follows:

3.1 In the case of ***Mohammad Ali Imam and others Vs. State of Bihar*** reported in ***(2020) 5 Supreme Court Cases 685*** *held as follows:*

> *".On the other hand, the learned counsel for the respondents have pointed out that much water flowed after that judgment and inter alia, invited our attention to the judgment in State of W.B. V. Ratan Behari Dey (referred to in the impugned judgment itself) opining that it is open to the State or the Corporation to change the conditions of service unilaterally,*

*and terminal benefits as well as pensionary benefits constitute conditions of service. Thus, the power to revise salaries and/or pay scales, as also terminal benefits/pensioners benefit can be made as a concomitant of that power so long as the date is specified in a reasonable manner."*

*9. .....*

*10. .....*

*11.Apart from this, there may be other considerations in the mind of the executive authority while fixing a particular date i.e. economic conditions, financial constraints, administrative and other circumstances, and if no reason is forthcoming from the executive for fixation of a particular date, it should not be interfered with by the Court unless the cut-off date leads to some blatantly capricious or outrageous result. In such cases, it has been opined that there must be exercise of judicial restraint and such matters ought to be left to the executive authorities, to fix the cut-off date, and the Government thus, must be left with some leeway and free play at the joints in this connection. Even if no particular reasons are given for the cut-off date by the Government, the choice of cut-off date cannot be held to be arbitrary (unless, it is shown to be totally capricious or whimsical)-State of A.P. v. N.Subbarayudu.*

3.2 In the case of ***Government of Andhra Pradesh and others Vs.***

***N.Subbarayudu and Others*** *r*eported in ***2008 14 SCC 702****,* the Apex Court ruled as follows:

> "*5.In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary.*
>
> *6. No doubt in D.S.Nakara V.Union of India this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigit view taken in Nakara case as observed in para 29 of the decision of this Court in State of Punjab V. Amar Nath Goyal.*
>
> *7. There may be various consideration in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government*

*must be left with some leeway and free play at the joints in this connection.*

*8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide State of Buhar V. Ramjee Prasad, Union of India v. Sudhir Kumar Jaiswal (vide SCC para 5), Ramrao v. All India Backward Class Bank Employees Welfare Assn. (vide SCC para 31), University Grants Commission v. Sadhana Chaudhary, etc. It follows, therefore, that even if no reasons has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.*

*9. As has been held by this Court in Aravali Golf Club v. Chander Hass and in Govt. of A.P. v. P.Laxmi Devi the Court must maintain judicial restraint in matters relating to the legislative or executive domain."*

3.3 In the case of ***State of Tripura and others Vs. Anjana Bhattacharjee and others*** *r*eported in ***2022 SCC Online SC 1071,*** *t*he Hon'ble Supreme Court observed as follows:

*17. When specific statistics were provided before the*

*High Court justifying its policy decision and the financial crunch/financial constraint was pleaded, there was no reason for the High Court to doubt the same. As such the findings recorded by the High Court in the impugned judgment and order is contrary to the averments made in affidavit filed on behalf of the State Government. From the affidavit filed before the High Court reproduced hereinabove, we are satisfied that a conscious policy decision was taken by the State Government to grant the benefit of revision of pension notionally from 01.01.2006 or from the date of superannuation till 31.12.2008 and to pay/grant the benefit of revision of pension actually from 01.01.2009. which was based on their financial crunch/financial constraint.*

*18. Whether the financial crunch/financial constraint due to additional financial burden can be a valid ground to fix a cut-off date for the purpose of granting the actual benefit of revision of pension/pay has been dealt with and/or considered by this Court in the case of Amar Nath Goyal (supra). In the aforesaid decision, it is observed and held as under:-*

*"26.It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 01.04.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications*

*are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.*

*XXX XXX XXX*

*32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including the following two cases: In State of Rajasthan v. Amrit Lal Gandhi [(1997) 2 SCC 342 : 1997 SCC (L&S) 512 : AIR 1997 SC 782] this Court went so as far as to note that:*

*"Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the Writ Petitions and substituting the date of 01.01.1986-01.01.1990."*

*33. More recently, in Veerasamy [(1999) 3 SCC 414 : 1999 SCC (L&S) 717] this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis [supra fn 2 SCC at p.421 (para 15).]. In that case, the pension scheme applied differently to persons who had retired from service before 01.07.1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes."*

*19. In the aforesaid decision this Court after considering the earlier decisions of this Court in the cases of State of Punjab v. Boota Singh (2000) 3 SCC 733 and State of Punjab v.J.L.Gupta, (2000) 3 SCC 736, it is specifically observed and held that for grant of additional benefit, which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary.*

*20. In the subsequent decision in Bihar Pensioners Samaj (supra), the decision in the case of Amar Nath Goyal (supra) is followed and it is observed and held that financial constraints could be a valid ground for introducing a cut-off date while introducing a pension scheme on revised basis. It is further observed and held by this Court in the aforesaid decision that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration."*

4. Fixing cut off date for extending the monetary benefits cannot be interfered. The financial burden of the State and the economic factors are to be taken into consideration, while extending the monetary benefits with retrospective effect or to interfere with the cut off date fixed in financial matters. In the present case, with reference to the Pay Rules, the Government

issued clarification in Letter dated 29.03.2012, stating that the employees who have appointed between 01.04.2003 and 31.12.2005 are eligible for one increment. The petitioner was promoted to the post of Senior Bailiff beyond the cut off date fixed by the Government. Therefore, the Authorities found that the writ petitioner is not eligible to draw one increment, which was erroneously granted.

5. Mr.V.Ayyadurai learned Senior Counsel for Mr.A.Durai Eswar appearing on behalf of the 1st and 3rd respondent could not able to establish that the petitioner has submitted any false representation or given an undertaking at the time of grant of one increment contrary to the Government clarification. Therefore, the petitioner cannot be faulted for wrong fixation. Applying the principles laid down in ***White Washer's*** case, the petitioner is entitled for the benefit of waiver of excess amount paid to them. But the refixation of pay done in accordance with the Pay Rules are to be sustained.

6. Accordingly, the excess Salary paid to the petitioner need not be recovered. If any amount has already been recovered, the recovered amount alone is directed to be refunded within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, the revision of pay and

pension effected is upheld.

7. With these directions, this Writ Petition stands allowed in part. No costs. Consequently, connected miscellaneous petitions are closed.

**[S.M.S.J.] [K.R.S.J.]**
**04.03.2024**

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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**S.M.SUBRAMANIAM,J.**
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Order in
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(2/2)