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W.P.No.14289 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

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

W.P.No.14289 of 2024
and
W.M.P.No.15513 of 2019

E.Kasthuribai Gandhi
W/o. S.T.Jothi,
Bench Clerk, Gr.II,
Principal Subordinate Court,
Cuddalore.

... Petitioner

Vs.

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

... 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 ROC.No.105514-A/2022/IAW dated 26.07.2023 and the consequential proceedings of the 3rd respondent in D.No.5922/2023 dated 09.08.2023 and the 4th respondent in D.No.2365/2023 dated 07.09.2023 with respect to refixation of pay and recovery, quash the same and direct the respondents to regularize the petitioner's service from the date of joining in the post of Typist/Copyist namely 27.08.2007 with all consequential service and monetary benefits and grant such other further relief.

For Petitioner	: Mr.K.Venkatramani Senior Counsel for Mr.M.Muthappan
For R1	: Mr.S.John J.Raja Singh Additional Government Pleader
For R2 & R4	: Mr.M.T.Arunan

ORDER

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

The Audit Objections raised by the Internal Audit Wing of Principal Seat of Madras High Court is under challenge in the present writ proceedings.

2. The writ petitioner was initially appointed to the post of Copyist



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through Employment Exchange. Subsequently, she was promoted to the post of Head Clerk and working as such.

3. It is not in dispute that though the petitioner was appointed to the post of Copyists in the year 2007, her services were regularised with effect from 09.07.2009 in proceedings dated 16.03.2011 in the post of Copyist. The order of regularization issued in the year 2011 became final. Thus, the date of regularization of the petitioner is to be considered as 09.07.2009 for all purposes.

4. The Internal Audit Wing raised an objection that the increment granted from the date of initial appointment in the year 2007 was not in accordance with the Pay Rules and consequently, raised an objection and ordered for recovery of excess pay and allowances disbursed to the writ petitioner.

5. Mr.K.Venkat Ramani, learned Senior Counsel would contend that there is no fault on the part of the petitioner. The petitioner has not made any misrepresentation regarding fixation of pay. She was appointed in the



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year 2007. Her regularization with effect from 2009 itself is not in consonance with the Rules in force. Similar cases were already considered by this Court and regularisation was granted with retrospective effect.

6. Mr.M.T.Arunan, learned Counsel appearing on behalf of the respondents 2 to 4 would oppose by stating that the regularization remains unchallenged. Once the date of regularization of the petitioner is 09.07.2009, she is not entitled to get increment from the date of appointment. Audit objections raised is accordance with the Pay Rules and Government Orders in force. Therefore, Audit Objections raised is to be sustained.

7. We are of the considered opinion that there was no misrepresentation on the part of the petitioner, while fixation of pay at the time of appointment or while revising the pay in the promotional post. The Establishment fixed the pay and further it was revised on her promotion. The date of regularization cannot be now altered, since the proceedings issued in the year 2011 and become final. Thus, the date of regularisation of the petitioner is 09.07.2009 and the benefits are to be granted based on the said date. The Audit Objection raised regarding excess payment of salary alone is



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to be considered by this Court. The excess salary, even as per the Audit
Objections was paid in the year 2007 and in the event of recovery of the said
amount now after a lapse of several years, it would result in hardship to the
employee. Recovery of excess salary after a prolonged period is
impermissible. Lump-sum recovery would result in hardship to the employee.
But the revised pay as done in accordance with the Pay Rules and
Government Orders in force is to be confirmed.

8. For all these reasons, the recovery of excess salary alone is set
aside. The revised fixation done in accordance with Pay Rules and
Government Orders in force stands confirmed and the Writ Petition stands
allowed-in-part. No costs. Consequently, connected miscellaneous petition is
closed.

J.]

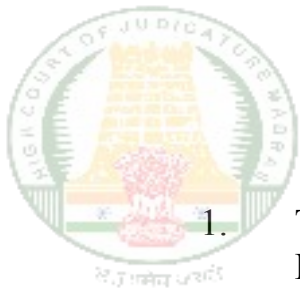
[S.M.S., J.] [C.K.,

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Neutral Citation : Yes/No
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C.KUMARAPPAN,J.

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Order in
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