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W.P.Nos.19224, 19225 and 19227 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and**

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.Nos.19224, 19225 and 19227 of 2022

W.P.No.19224 of 2022:

Mr.V.K.Boopathirayar

... Petitioner

Vs.

1. The Principal District Judge,
Erode.

2. The Registrar General,
High Court of Judicature at Madras,
Chennai.

3. Accountant General (Accounts & Entitlements),
Tamil Nadu, No.361, Anna Salai,
Teynampet, Chennai – 600 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the order, dated 30.07.2021 passed by the 1st Respondent in the Proceedings in A. No. 87 / 2021 (D.No. 5785) on the file of the Honble 1st Respondent and quash the same and consequently direct the respondents to extend the benefit of 5 percent personal pay as per the G.O.Ms. No. 664 Finance (pay Cell)



Department, dated 24.08.1992 to the petitioner and to pay the same on and from 05.07.2000 (the date of his appointment as Senior Bailiff) along with the suitable interest within a stipulated time frame.

W.P.No.19225 of 2022:

Mr.K.Velliangiri

... Petitioner

Vs.

1. The Principal District Judge,
Erode.

2. The Registrar General,
High Court of Judicature at Madras,
Chennai.

3. Accountant General (Accounts & Entitlements),
Tamil Nadu, No.361, Anna Salai,
Teynampet, Chennai – 600 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the order, dated 30.07.2021 passed by the 1st Respondent in the Proceedings in A. No. 87 / 2021 (D.No. 5787) on the file of the 1st Respondent and quash the same and consequently direct the respondents to extend the benefit of 5 percent personal pay as per the G.O.Ms. No. 664 Finance (pay Cell) Department, dated 24.08.1992 to the petitioner and to pay the same on and from 08.01.2001 (the date of his appointment as Senior Bailiff) along with the suitable interest within a stipulated time frame.



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W.P.No.19227 of 2022:

Mr.M.Dhanaraj

... Petitioner

Vs.

1. The Principal District Judge,
Erode.

2. The Registrar General,
High Court of Judicature at Madras,
Chennai.

3. Accountant General (Accounts & Entitlements),
Tamil Nadu, No.361, Anna Salai,
Teynampet, Chennai – 600 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the order, dated 30.07.2021 passed by the 1st Respondent in the Proceedings in A. No. 87 / 2021 (D.No. 5786) on the file of the 1st Respondent and quash the same and consequently direct the respondents to extend the benefit of 5 percent personal pay as per the G.O.Ms. No. 664 Finance (pay Cell) Department, dated 24.08.1992 to the petitioner and to pay the same on and from 30.11.2001 (the date of his appointment as Senior Bailiff) along with the suitable interest within a stipulated time frame.

For Petitioner : Mr.K.R.Samratt (in all W.Ps)

For Respondents : MR.V.Vijay Shankar(in all W.Ps)



ORDER

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

The order of rejection, rejecting the claim of the writ petitioners for grant of 5% personal pay as per the G.O.Ms. No. 664 Finance (pay Cell) Department, dated 24.08.1992 is sought to be quashed in these writ proceedings.

2. The writ petitioners are working as Senior Bailiff in Judicial Department. Their claim to grant 5% personal pay of the basic pay in accordance with the Governmental Order issued in G.O.Ms. No. 664 Finance (pay Cell) Department, dated 24.08.1992 was rejected by the learned Principal District Judge, Erode and the said order came to be challenged in these writ proceedings.

3. The learned counsel for the writ petitioners, Mr.K.R.Samratt would submit that the benefit of 5% personal pay was extended to many Senior Bailiff in other Districts and the order of the learned Principal District Judge, Erode, declining to grant 5% personal pay to the writ petitioners are discriminatory. When the benefit of 5% personal pay was granted to other



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Senior Bailiff, the same is to be extended to the writ petitioners also.

4. The origin of 5% personal pay was granted pursuant to the implementation of the 5th Pay Commission with effect from 01.05.1988. The recommendations of the 5th Pay Commission was implemented in G.O.Ms.No.666, Finance Pay Cell Department dated 27.06.1989.

5. The main grievance has been voiced by Record Clerks, Junior Assistants, Assistants and Superintendents. Therefore, the Government referred the case to the official committee for rectification of pay anomaly. Since many Employees' Associations have submitted representations for rectification of pay anomaly, the Government passed orders in G.O.Ms. No. 664 Finance (pay Cell) Department, dated 24.08.1992, which reads as follows:-

“Accordingly direct that five per cent of the basic pay computed as on 1-8- 92 is granted as personal pay to the followings:-

I.All the categories of staff in the pre revised scale of pay at Rs. 475 -775 moving over to the revised scale of pay of Rs. 775-1030;



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II.All the categories of staff in pre visited scale of pay of Rs.610-1075 moving over to the revised scale of pay of Rs.950- 1500 or Rs. 975-1660;

III.All the categories of staff in the pre revised scale of the pay of Rs. 705-1230 moving over to the revised scale of pay of Rs. 1200-2040; and

IV.All the categories of a staff in pre revised scale of Rs.905-1545 moving over to the revised scale of pay of Rs. 1600-2660.”

6. Paragraph 5 of the G.O.Ms. No. 664 Finance (pay Cell) Department, dated 24.08.1992 would indicate that the personal pay sanctioned under exceptional circumstances as one time transitional measure for all the categories in the specified scales. It will apply also to the employees revised selection grade and special grade of these categories.

7. Therefore, it is amply clear that at the time of the implementation of 5th Pay Commission, the employees suffered pay anomaly while fixing the revised pay alone were granted 5% personal pay of the basic pay. After 5th Pay Commission, the 6th Pay Commission came into effect from 01.01.1996, 7th Pay Commission in the year 2006 and 8th Pay Commission in



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the year 2016.

8. The pay anomalies rectified in the 5th Pay Commission was merged with the revised scale of pay fixed in the 6th Pay Commission. All such rectification of anomalies made in the 5th Pay Commission, including the 5% personal pay was taken into consideration while fixing the revised pay in implementation of 6th Pay Commission and subsequent Pay Commissions.

9. Curiously, in these case, the writ petitioners were not at all in service at the time of implementation of 5th Pay Commission and also while issuing G.O.Ms. No. 664 Finance (pay Cell) Department, dated 24.08.1992. These writ petitioners have not faced any pay anomaly.

10. The counter filed by the learned Principal District Judge, Erode categorically deals with the earlier orders of this Court relied on by the writ petitioners in W.P (MD) No.8818 of 2008 dated 13.10.2009. The relevant paragraphs of the counter filed by the learned Principal District Judges reads as under:-

“ 6. I further submit it is also true that the



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Division Bench of the Hon'ble Madras High Court in W.P(MD) No.8818 of 2008 dated 13.10.2009 has, in this regard, passed an order which would read inter as under:

'.....Considering the recovery already made, we hold that it is a fit case where interest at the rate of 6% per annum is to be paid from 01.08.1992'

But, the points are (1) that the crucial date to be considered is 08.1992 and (2) that the application of the aforesaid GO only to those coming under the pre-revised scale. This has not been made applicable to subsequent incoming staff. Further, the Division Bench of the Hon'ble Madras High Court, in WP (MD) No.7387 of 2011, has followed the decision in WP(MD) No.8818 of 2008, but has not made any relaxation extending the benefit to the staff Joining after 01.08.1992 and not coming under the pre-revised scale. Therefore, it is clear that the decisions rendered in the Writ Petition relied on by the petitioner would make the benefits of the GO Ms.No.664 Finance (Pay Cell)



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Department, dated 24.08.1992 applicable to such employees already in the pre revised scale as on 01.08.1992 whereas the appointment of the petitioner is after 01.08.1992. Hence, the Judgment relied on cannot help the competent authority.

*7.I further submit it is not known whether the benefits were extended to various other similarly placed Senior Bailiffs across the state. It is true that the Principal Secretary to the Government, Finance/CMPC Department has issued a letter in No.34283/CMPC/2010 dated 10.09.2010 to implement the judgment in WP(MD) No.8818/2008 of the Hon'ble Madras High Court in respect of the post of Senior Bailiffs in Judicial Department **with effect from 01.08.1992, but it does not mean that it is applicable to the staff appointed after 01.08.1992.***

8. I further submit it is true to state that the petitioner submitted before the Principal District Judge, Erode, an application seeking grant of 5% personal pay and an official memorandum was issued to him calling for explanation to the points standing against him.”



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11. In view of the fact that the writ petitioners were not even appointed during the relevant point of time when the benefit of 5% personal pay was extended, the decision taken by the respondents are in consonance with the principles and there is no infirmity.

12. Regarding the submission made on behalf of the writ petitioners that in other Districts, the benefit of 5% personal pay was granted based on some of the judgements, the 2nd respondent / Registrar General, High Court of Madras shall issue appropriate circular to all the learned Principal District Judges to ensure that 5% personal pay are not granted in violation of the Government Order and to the employees, who were appointed subsequent to the implementation of 5% personal pay in G.O.Ms. No. 664 Finance (pay Cell) Department, dated 24.08.1992.

13. This Court has witnessed many Writ Petitions challenging refixation and the order of recovery. Regarding refixation, it is to be done in accordance with the Pay Rules and Governmental Orders. The employees appointed after the 5th Pay Commission are not entitled to claim 5% personal pay. If at all 5% personal pay has been extended erroneously, the amount



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already granted need not be recovered, but the refixation is to be corrected in accordance with the Pay Rules and Governmental Orders in force. Such an exercise is directed to be done in respect of all the employees, who all are claiming or receiving 5% personal pay across the State of Tamil Nadu. In respect of the employees, who have not filed Writ Petitions and facing recovery, the said recovery proceedings also needs to be stopped, since the Apex Court has held that the recovery of erroneous grant of salary to the employees working in the Group C and D need not be done.

14. With the above directions, these Writ Petitions stand dismissed.

No costs.

(S.M.S.,J.) (K.R.S.,J.)
16.02.2024

skr

Index : Yes

Speaking order

Neutral Citation : Yes

To

1. The Principal District Judge,
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2. The Registrar General,



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