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W.P.No.19191 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19191 of 2022 and
WMP.No.18495 of 2022

D.Thamizhselvi

... Petitioner

Vs.

1.The Transport Commissioner,
Chepauk,
Chennai-5

2.The Regional Transport Officer,
Regional Transport Office,
Peruvangur Village & Post,
Kallakurichi Taluk & District 606 213

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the order of the second respondent made in Na.Ka.No.9760/A1/2022 dated 14.07.2022 and to quash the same.

For Petitioner

: Mr.L.Chandrakumar

For Respondents

: Dr.T.Seenivasan,
Special Government Pleader



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ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 14.07.2022 thereby re-fixed the petitioner's pay and also ordered for recovery.

2. The petitioner was selected during the year 2007 in Group-IV Service by Tamilnadu Public Service Commission. She was allotted to Tamilnadu Judicial Ministerial Services by appointing as Steno Typist Grade-III on 22.02.2007. Thereafter, she also got selected in another recruitment through TNPSC wherein she was allotted to Transport Department and she had joined as Stenographer Grade III after relieving from the Judicial Department on 10.09.2009. Thereafter she was promoted to the post of Assistant with effect from 15.11.2012 and now promoted as Superintendent from 01.03.2021. While changing her service, her pay and the increment have been fixed as per GO.Ms.No.234 P&AR Department dated 01.06.2009. She was allowed to avail such benefit by including annual increment consequent upon her appointment in the Judicial Department between 2007 to 2009. The two years of her service were taken into account for the purpose of fixation of



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pay by including increments and the same being continued properly as per

Rules. However, with reference to the first respondent's proceedings dated 14.03.2022, the second respondent issued order dated 14.07.2022, thereby cancelled pay fixation done in the post of Stenographer Grade-III by including the earned increments in the judicial department and thereby refixing pay with recovery of excess payment to the tune of Rs.10,92,148/- It was directed to be recover in one lumpsum.

3. The learned counsel for the petitioner would submit that the petitioner was originally appointed as Stenotypist on 22.02.2007 in the Judicial Department and she worked till 09.09.2009. She got relieved and appointed as Stenographer Grade-III in the respondent Department from 10.09.2009 without any break. Therefore, the services rendered in the erstwhile Judicial Department is liable to be taken into account for all purposes inclusive of the earned annual increments in the Judicial Department. The respondents applied Fundamental Rules 22 (b)(6) stating that any appointment / direct recruitment made by the TNPSC has to be fixed in the minimum of scale of pay which suffers total non application of mind. Since the appointment by TNPSC in the Judicial Department, salary was fixed in the minimum pay scale and also



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earned two increments. Thereafter, TNPSC appointed the petitioner as Stenographer Grade-III in the respondent Department. Therefore, the fixation of her pay is proper and re-visitation of her fixation of salary does not arise.

4. The second respondent filed counter and submitted that while the petitioner was working as Steno Typist Grade-III in the Judicial Department, she had appeared for TNPSC Group IV Services through another recruitment and she got selected as Steno Typist Grade-III and allotted to Transport Department. Accordingly, she had joined in the Office of the Deputy Transport Commissioner, Villupuram on 10.09.2009. Her salary was fixed at minimum stage of Rs.7600/- in the time scale of pay 5200-20200+2400 GP as applicable to the post of Stenotypist. While being so, the petitioner made representation for re-fixation of her pay based on her last drawn pay when she was relieved from the Judicial Department. The first respondent erroneously considered the request made by the petitioner by an order dated 06.11.2016 and ordered to refix the pay of the petitioner from 10.09.2009. As per GO.Ms.No.1072 Personnel and Administrative Reforms Department dated 31.10.1986, it is ordered that it is officiating Government in a post, who has no substantive appointment, is discharged from service for want of vacancy, she shall on re-



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appointment to the same post, drawn the pay last drawn prior to her discharge from service. The periods prior to the discharge from service shall count for the purpose of future increment in the time scale of pay of that post. In view of the said position, the petitioner who was working as Stenotypist in Judicial Department was not ousted in her previous department or discharged from service for want of vacancy in that department. Subsequent to the earlier selection, she participated in the TNPSC Group-IV service through another recruitment and got selected to the post of Stenotypist Grade-III and allotted to Transport Department. Accordingly, she was relieved from the earlier department and she had joined in the respondent Department.

5. As per Fundamental Rule 22(b)(6), in case a Government servant already in service in a post is appointed to another post through the TNPSC by direct recruitment, or when the mode of his appointment to the new post is by direct recruitment, the Government Servant concerned should be allowed to draw the minimum of the time scale of pay or provided in the service rules relating to such appointments and fixation of pay under Fundamental Rule 22 or 22 B is not admissible. In fact, the petitioner was fixed minimum time scale of pay, admissible to the post of Stenotypist in the respondent Department at



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Rs.7600/-. Subsequently she made representation and her earlier service in the

Judicial Department was taken into consideration and re-fixed the salary only in the year 2016. Therefore, the respondent rightly re-fixed the petitioner's pay under Rule 22(b)(6) of the Fundamental Rules and ordered to remit excess pay and allowances. Hence, this Court finds no infirmity or illegality in the order passed by the second respondent and this writ petition is liable to be dismissed.

6. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

08.01.2024

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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