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W.P.Nos.31031, 31053, 31070 and 31074 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR,

and

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.Nos.31031, 31053, 31070 and 31074 of 2024 and

WMP Nos.33646, 33647, 33673, 33677, 33718, 33719,

33720 and 33721 of 2024

K.Kayalvizhi

... Petitioner in
W.P.No.31031 of 2024

E.Sivagamasundari

... Petitioner in
W.P.No.31053 of 2024

S.Packirisamy

... Petitioner in
W.P.No.31070 of 2024

K.Govindaraj

... Petitioner in
W.P.No.31074 of 2024

Vs.

1. The Registrar General,
High Court, Chennai-104.

2. The Principal District and Sessions Judge,
Nagapattinam District 611 001.

... Respondents in
all the writ petitions



W.P.Nos.31031, 31053, 31070 and 31074 of 2024

PRAYER in all the writ petitions: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus calling for the records in Circular dated 13.09.2021 issued by the Registrar General on the file of the first respondent and quash the same and further forbearing the respondents from revising the pay of the petitioner, reducing and recovering on the basis of unlawful audit objection.

In all the writ petitions

For the Petitioner : Mr.B.Lenin Balu

For the Respondents : Ms.P.Selvi, Standing counsel

COMMON ORDER

(Order of the Court was made by D.KRISHNAKUMAR, J.)

All the writ petitions have been filed to quash the Circular dated 13.09.2021 issued by the Registrar General, Madras High Court, Chennai and further forbearing the respondents from revising the pay of the petitioner, reducing and recovering on the basis of unlawful audit objection.

2. Since the prayer sought for in all the writ petitions are one and the same, this court passes the common judgment.



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WEB COPY 3. *The case of the petitioners in nutshell is follows:*

The petitioner in W.P.No.31031 of 2024 is working as Central Nazir in District Court, Nagapattinam; the petitioner in W.P.No.31053 of 2024 is working as Sheristadar in Fast Track Mahila Court, Nagapattinam; the petitioner in W.P.No.31070 of 2024 is working as Record Keeper in District Court, Nagapattinam; and the petitioner in W.P.No.31074 of 2024 is working as Sheristadar in District Court, Nagapattinam.

3.1. The petitioners had received information that their pay revision and payment of arrears in the cadre of Head Clerk was not correct and hence it was decided to re-revise the pay drawn and also to initiate recovery of the excess amount paid. The petitioners learned that in the impugned circular dated 13.09.2021, the first respondent earlier recommended that only the post of Head Clerk of Chief Judicial Magistrate to be upgraded from the scale of pay 1400-2600 to 1600-2660 and not the other Head Clerks in Judicial Magistrate Court and hence audit objection was made.



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3.2. According to the petitioners, the upgradation of certain posts was made and recommended by the High Court as early as in the year 1992 from the scale of pay of Rs.1400-1600 / Grade Pay 4200 to 4800 in the Pay Band-II, i.e. present level 12 to 18 and following the same, the Government has also issued orders upgrading the posts. Further, this upgradation was not implemented across the State, and it was selectively implemented. As such, writ petition Nos.13459 to 13461 of 2011 were filed and as per the order dated 12.04.2017, the petitioners pay was upgraded retrospectively and consequently, their pay was revised and arrears were also received by them. Now, on the basis of the the audit objection, action has been taken to recover the amount. It is contended by the petitioners that they are nearing the age of superannuation and if the recovery proceedings are initiated against them, they will not permit to retire, unless they paid the recovery amount. Hence the writ petitions have been filed.

4. Learned Standing Counsel appearing for the respondent, on instructions from the learned District Judge, Nagapattinam submitted that,



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the post of Head Clerk, Judicial Magistrate Court and also the Head Clerk, Chief Judicial Magistrate Court, Nagapattinam were sanctioned in the (pre-revised) scale of pay of Rs.5000-8000 subsequently revised as PB2 9300-34800 + 4200 GP, as per G.O.Ms.No.234 Finance (PC) Department, dated 01.06.200. However, mistakenly, the writ petitioners and some of the staff members in the court of Nagapattinam District were fixing/re-fixing their scale of pay in the post of Head Clerk, Judicial Magistrate Court in PB2 Rs.9300-34800+GP 4800 Level 18 (Superintendent level), instead of PB2 Rs.9300-34800 + GP 4200 Level 11. It is also submitted that the scale of pay of the promotive post of Bench Clerk Grade-II is in PB2 Rs.9300-34800 + GP 4300) Level 12 and hence, it is impermissible to fix the pay of the petitioners in the post of Head Clerk Judicial Magistrate Court on par with the Superintendent i.e. PB2 Rs.9300-34800+GP 4800) Level 18, which is the feeder post of Bench Clerk Grade II.

5. We have gone through the impugned circular dated 13.09.2024 issued by the Registrar General, Madras High Court, Chennai, in which, it is held as follows:



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2. In the said Government order (G.O.Ms.No.416, dated 11.03.1993), though the Government among other posts have upgraded the post of **Head Clerk in the Judicial Magistrate Court** instead of **Head Clerk in the Chief Judicial Magistrate Court**, the High Court, in its proceedings dated 20.07.1993 in the reference 2nd cited, among other posts, has upgraded only the posts of Head Clerk in Sub Courts, District Munsif Courts (including DM-cum-JM Court) and Chief Judicial Magistrate Courts and **not the post of Head Clerk of Judicial Magistrate Courts**, as proposed by the High Court under reference first cited.

3. However, taking advantage of the mistake crept-in in G.O(Ms) No.416, Home (Courts-V) Department dated 11.03.1993, the pay scale as that of the Superintendent level was sought for by the Head Clerks in the Judicial Magistrate Courts by filing writ petitions, which were accordingly ordered. Placing reliance on the same, similarly situated persons (both in service and retired) are requesting to refix their pay as per the aforesaid Government Order.

4. Therefore, *the High Court, in the letter under reference 4th cited, has addressed the Government to issue necessary amendment to G.O.Ms.No.416, Home (Cts.V) Department, dated 11.03.1993, to replace the words " Judicial Magistrate Court" by the words " Chief Judicial Magistrate Court" and orders in this regard are awaited.*

5. Inview of the above, the Principal Judge/Principal District Judges/ District Judges/District Judge -cum-Chief Judicial Magistrate in the State of Tamil Nadu are hereby directed that no claim made by any of the Head Clerk of the Judicial Magistrate Courts seeking pay



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revision on par with that of Superintendents in Tamil Nadu Ministerial Service shall be entertained based on the orders passed by the Hon'ble Division Bench in W.P.(MD) No.13459 to 13461 of 2011 dated 12.04.2017.

From the above circular, it is made clear that the High Court has sent a letter to the Government seeking necessary amendment in G.O.Ms.No.416, dated 11.03.1993 and the orders in this regard are awaited.

6. At this juncture, learned Standing Counsel appearing for the respondents submitted that, so far, no recovery proceedings have been initiated as against the petitioners.

7. Considering the fact that the impugned Circular was issued only by giving such instructions to the concerned courts in the Tamil Nadu State; and also seeking amendment to the G.O.Ms.No.416, dated 11.03.1993 as stated supra; and also taking into account the fact that so far, no recovery order has been issued against the petitioners, we are of the view that the writ petitions cannot be entertained at this premature stage. In such



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circumstances, it is for the Government to take appropriate decision and issue necessary amendment to the said G.O. and communicate the same the Registrar General, Madras High Court, Chennai-104 at an earliest.

8. With the above observations, all the writ petitions are dismissed. There shall be no order as to costs. Connected miscellaneous petitions are closed.

(D.K.K.J.) (P.B.B.J.)
25.10.2024

Internet: Yes/No
Index : Yes/No
mst

To

1. The Registrar General,
High Court, Chennai-104.
2. The Principal District and Sessions Judge,
Nagapattinam District 611 001



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