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W.P.No.26862 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.26862 of 2023

E.Savithri

... Petitioner

Vs.

1. The Registrar General,
High Court Of Judicature at Madras,
High Court Buildings, Chennai - 104.

2. The Principal District Judge,
Vellore.

3. The Presiding Officer,
Principal Labour Court, FAC,
Vellore.

4. The Principal Accountant General,
(Accounts And Entitlement) Tamil Nadu,
No.361, Anna Salai,
Teynampet, Chennai.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the 3rd respondent vide Order in Dis No.1174/2022 dated 15.11.2022 and



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consequential order in dis. No.555/ 2023 dated 06.07.2023 and quash the same and consequently direct the respondent to refund a sum of Rs.12,37,032 /- (Rupees Twelve Lakhs Thirty Seven Thousand and Thirty Two Rupees Only), recovered from petitioner's DCRG, along with 12% statutory interest and thereby revise and refix the Scale of the petitioner, by restoring her old Pay scale of Rs.62,200 /- .

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.V.Vijayshankar (for R1 to R4)

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

This Writ Petition has been instituted questioning the validity of the re-fixation done by the respective learned Principal District and Sessions Judge and the Registrar General, High Court of Judicature at Madras. Consequential recovery imposed on the staff of the judiciary are also under challenge.

2. The issue raised in this Writ Petition is no more *res integra*. Wrong fixation of pay or pension, if any identified cannot be sustained. In the present case, the pay fixation in the Selection Grade cadre was made exceeding the scale of pay, as admissible to the promotional post. When



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the matter went to the Accountant General of Tamil Nadu for scrutinization, an objection was raised regarding the fixation made by Judicial Departments. Relying on the Pay Rules and the consequential Governmental Orders, the Accountant General of Tamil Nadu objected by stating that the Selection Grade Pay fixation to these judicial staff / writ petitioner is exceeding the scale of pay, as admissible to their promotional posts. Thus, the Accountant General of Tamil Nadu restricted the pay, as admissible to the post of Selection Grade and consequently, instructed the authorities competent to revise the scale of pay by following the procedures.

3. In view of the objection raised by the Accountant General of Tamil Nadu, the authorities competent in the Judicial Department revised the scale of pay of the writ petitioner, restricting the pay, as admissible for Selection Grade and Special Grades. However, while revising the scale of pay based on the objections raised by the Accountant General of Tamil Nadu, the authorities competent imposed recovery. Thus, the Writ Petition is filed challenging the fixation as well as the consequential recovery imposed by the authorities.



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4. As far as the pay fixation in the Writ Petition is concerned, admittedly it was fixed by the Establishment of the Judicial Departments.

We could not able to find out any misrepresentation on the part of the employees, more so, no declaration was obtained at the time of fixation of pay in the Selection Grade or Special Grade. Thus, the employees cannot be faulted regarding the wrong fixation made by the competent authorities of the Judicial Department.

5. The Apex Court and the High Court, time and again held that recovery of excess pay, if imposed after a lapse of several years would cause prejudice to the interest of the employees. In the event of any recovery at this length of time, the same would cause prejudice to the employee and she may not be in a position to repay the salary that she had already received several years back. Therefore, the Courts have consistently held that recovery of excess pay from the employees after several years, pertinently after attaining the age of superannuation is liable to be set aside.

6. The Hon'ble Division Bench of this Court vide order dated 11.02.2021 made in W.A.No.312 of 2020 held as follows:-



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“ 6. Upon considering the rival contentions, it is evident that the main issue to be decided is whether the appellant is making a claim with regard to a post which had a promotional avenue or not. Paragraph 4 of G.O.Ms.No.162 is relevant in this connection and it is set out below :-

4.The Selection Grade and Special Grade will be the corresponding revised scales based on the existing pay scales of these grades. The appropriate revised scales of pay for Selection Grade / Special Grade are indicated in Schedule II to the Tamil Nadu Revised Scales of Pay Rules, 1998. Provided further, Selection Grade and Special Grade scales shall be regulated as below:-

(i) For posts, having no promotional avenue, the Selection Grade and Special Grade shall be allowed as indicated in Schedule II;

(ii)For posts having promotional posts, if the Selection Grade scale of pay indicated in the said Schedule is higher than the pay scale of



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promotional post, the Selection Grade should be limited to the pay scale of the first level promotion post. Similarly, if the Special Grade scale is higher than the pay scale of second level promotion post, the Special Grade scale shall be limited to the pay scale of second level promotion post only.

The existing procedure for movement to Selection Grade/ Special Grade and fixation of pay in these grades shall continue to be adopted in future in the revised scales also.

7. Keeping in mind the above paragraph 4, the case of the appellant should be examined. In paragraph 7 of the affidavit in support of the writ petition, the appellant states that he was awarded the Selection Grade in the cadre of Junior Administrative Assistant on 27.06.1999 and, therefore, became entitled to the increase by way of revision of pay. Therefore, it is clear that the claim is in respect of the period when the



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appellant was a Junior Administrative Assistant. In paragraph 4 of the aforesaid affidavit, the appellant states that he was promoted to the post of Senior Administrative Assistant on 01.08.2006. From these averments, there can be no doubt that the post of Junior Administrative Assistant was a promotional post and, indeed, the appellant was promoted from such post to that of Senior Administrative Assistant. Consequently, it is beyond doubt that clause (ii) of Paragraph 4 gets triggered. Once clause (ii) is triggered, the pay scale of the person in the Selection Grade post would be limited to the pay scale of the first level promotional post. Mr.Vijay Shankar points that this is precisely what was done in this case and, as a consequence, the grade pay of the appellant was limited to Rs.2,800/- although it would ordinarily have been Rs.4,200/- if it had not been a promotional post. The appellant has been unable to effectively refute this contention of the respondents. The judgment of the Madurai Bench of this Court in W.P.(MD) No.12104 of 2017 did not consider the import of clause (ii) of paragraph 4 of G.O.Ms.No.162 and record a find by interpreting the said clause. Instead, the Court relied on [State of Punjab v. Rafiq Masih \[\(2015\) 4](#)



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SCC 344] to reject the employer's endeavour to recover excess payments. The subsequent judgment in W.P.No.32149 of 2018 followed the earlier judgment and, once again, did not examine clause (ii) of paragraph 4 and enter findings thereon. Therefore, these judgments do not advance the appellant's cause.”

7. The judgment cited supra was subsequently followed by another Hon'ble Division Bench of this Court vide order dated 15.03.2022 in W.P.No.5872 of 2021 etc., batch. The relevant portion of the judgment reads as under:-

“ 12. After the judgments in [S.M.Kuppan](#), supra, and [C.Jacob](#), supra, were rendered, the issue was again examined by this court in the case of [N.Ramakrishnan](#), supra, and after quoting the relevant portion in G.O.Ms.No.162, dated 13.4.1998, a similar claim made by the appellant therein was not accepted. For ready reference, paragraph (4) of G.O.Ms.No.162, dated 13.4.1998 is quoted hereunder:

(i) For posts, having no promotional avenue, the Selection Grade and Special Grade shall be allowed as indicated in Schedule II;



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(ii) For posts having promotional posts, if the Selection Grade scale of pay indicated in the said Schedule is higher than the pay scale of promotional post, the Selection Grade should be limited to the pay scale of the first level promotion post. Similarly, if the Special Grade scale is higher than the pay scale of second level promotion post, the Special Grade scale shall be limited to the pay scale of second level promotion post only.

The existing procedure for movement to Selection Grade/ Special Grade and fixation of pay in these grades shall continue to be adopted in future in the revised scales also.”

8. Regarding the revision of pay, it was made pursuant to the objections made by the Accountant General of Tamil Nadu and as per the Pay Rules and Governmental Orders in the matter of fixation of pay.



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Therefore, we are of the considered opinion that errors in fixation is to be corrected, which was done in the present case. The employee is eligible to draw the salary, as per the fixation in accordance with the Pay Rules and Governmental Orders. Any excess pay, if allowed, the same would result in financial loss to the State's Exchequer. Unjust gain of public money, at no circumstances, be permitted by the Courts as well as by the Government.

9. In the present case, the fixation has been verified more than one occasion and the learned counsel, appearing on behalf of the respondents, Mr.V.Vijay Shankar, brought to our notice that the fixation, as suggested by the Accountant General of Tamil nadu was confirmed by the Hon'ble Division Bench of this Court. Therefore, we are not inclined to go into the correctness of the fixation, since the same has already been confirmed by the Hon'ble Division Bench of this Court. As far as the recovery is concerned, the same alone is to be set aside, considering the fact that the writ petitioner has served in Group C and Group D services and subsequently, attained the age of superannuation. Thus, the recovery would cause hardship to her.



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10. In view of the facts and circumstances, we are inclined to confirm the fixation done by the competent authorities based on the directives of the Accountant General of Tamil Nadu. In other words, the re-fixation made by the competent authorities stands confirmed. The recovery of the excess salary already paid alone is set aside. If any recovery has already been made in respect of any of the writ petitioner, the respective competent authorities are directed to repay the recovered amount within a period of 12 weeks from the date of receipt of a copy of this order. The order of re-fixation and the orders passed to that effect stands confirmed and recovery alone is set aside.

11. With these directions, the Writ Petition stands allowed. However, there shall be no order as to costs.

(S.M.S.J.,)

(K.R.S.J.,)

15.02.2024

Index : Yes

Internet: Yes

Speaking order

Neutral Citation : Yes

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S.M.SUBRAMANIAM, J.

and

K.RAJASEKAR, J.

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