



W.P.No.12829 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

WEB COPY

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

W.P.No.12829 of 2024
and
W.M.P. No. 13995 of 2024

S. Chitra

... Petitioner

Vs.

1. The Secretary to Government,
Home (Courts) Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Registrar General,
High Court, Madras – 600 104.
3. The Chief Judicial Magistrate,
Cuddalore District, Cuddalore.
4. The Principal District Judge,
Cuddalore District, Cuddalore.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India



W.P.No.12829 of 2024

for issuance of Writ of Certiorari, calling for the records of the 3rd respondent in connection with the impugned order passed by him in D.No.1983 dated 21.08.2023 and quash the same.

For Petitioner : Mr. K. Venkatramani, Senior Counsel
for Mr. M. Muthappan

For Respondents : Mr. T. Chandrasekaran,
Special Government Pleader [for R1]

Mr. P.M. Subramaniam,
Senior Counsel,
for Ms. N.K. Kanthimathi [for R2 to
R4]

ORDER

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

The notice issued by the Chief Judicial Magistrate, Cuddalore stating that an Audit Objection has been raised by the Internal Audit Wing of the High Court regarding erroneous fixation of pay to the petitioner is under challenge in the present writ petition.

2. The petitioner was asked to submit her objections within a period of one week. After submitting objections, the petitioner has chosen to file the writ petition.



W.P.No.12829 of 2024

3. No writ against the notice is entertainable in normal circumstances. Once a notice has been issued by the competent Authority, the employee is bound to respond and only after passing final orders, the writ petition is to be entertained. An Internal Audit Wing was constituted by the High Court to verify the correctness of the fixations made to the Court Staff across the State of Tamil Nadu and Puducherry. A special task was undertaken and accordingly, many such erroneous fixations of pay are identified. In order to correct the errors, the competent Authorities have taken efforts by issuing notice and received objections from the staff for passing final orders.

4. No doubt, in the event of dismissing the present writ petition merely on the ground that it has been filed challenging the notice, the result would be that the Authority will be passing the same order based on the Report of the Audit Wing and again the petitioner has to file another writ petition. The notice itself indicates that there is an Audit Objection and the pay of writ petitioner was fixed erroneously and excess pay will be recovered. When there is a indication in the notice, we are not inclined to drive the petitioner again to approach the Authorities, which would result in multiplicity of proceedings.



W.P.No.12829 of 2024

5. Contrarily, such issues can be settled in order to give *quietus*.

More-so, the employees need not be unnecessarily driven repeatedly to approach the Courts for this nature of cases. Thus, entertaining the present writ petition cannot be cited as a precedent for entertaining other writ petitions filed challenging notice/show cause notice or enquiry notice. In view of the fact that the Audit Report has already been submitted and the recovery has been indicated in the notice, the present case is taken up for final disposal.

6. Mr. K. Venkatramani, learned Senior Counsel appearing on behalf of the petitioner would submit that the revision of pay proposed to be made is improper, since original fixation was made in the year 2007. After a prolonged period re-fixation cannot be done, which would affect the service rights of the petitioner. Thus, the impugned notice is to be set aside.

7. Mr.P.M.Subramaniam, learned Senior Counsel appearing on behalf of the respondents 2 to 4 would oppose by stating that it is only a notice which is under challenge and thus, the writ petition is not entertainable. Further, the reply given by the petitioner would indicate that she has



W.P.No.12829 of 2024

misrepresented her case. Such a misrepresentation would disentitle the petitioner from getting relief from the hands of this Court. Thus, the writ petition is to be rejected. The learned Principal District Judge, Cuddalore has sought for the willingness of the petitioner for promotion to the post of Assistant and the petitioner has relinquished. Therefore, the representation given by the petitioner is misleading and the allegations made against the learned Principal District Judge is unfounded. We are not approving such representations of the employees, which all are contrary to the facts. While making allegation against the competent Authorities, the employees are expected to be cautious and true facts alone to be stated while defending their cases. Any such misleading facts or misrepresentation may warrant disciplinary action against such employees. However, the petitioner hereinafter is expected to be cautious, while submitting explanations to the competent Authority or making statement against the administration.

8. The learned Senior Counsel for the petitioner has also not denied the fact that the petitioner has relinquished her right of promotion for 3 years in the year 2017.



W.P.No.12829 of 2024

9. As far as the refixation of pay is concerned, the competent Authority at any point of time is empowered to correct the mistakes, if any, occurred in the fixation of pay. No employee is entitled to receive pay over and above his/her eligibility. In the event of identifying errors in the fixation, the said errors are bound to be corrected and there is no time limit for correction of errors by the competent Authority.

10. Thus, delay cannot be a ground to rectify the mistakes occurred in the fixation of pay. Employees are not entitled to get excess pay, which would result in unjust gains. Public money cannot be paid in excess and employees are entitled to get the pay as admissible under the Pay Rules and Government Orders in force. Thus, we do not find any ground to interfere with the re-fixation of pay done by correcting the mistakes occurred in earlier fixation. However, recovery of excess salary made after several years if allowed would result in hardship to the employees. The wrong fixation was made in the year 2007 and there was a delay on the part of the administration in identifying the wrong fixation for which the petitioner need not be blamed. Therefore, we are inclined to set aside the recovery of excess salary alone.



W.P.No.12829 of 2024

11. Accordingly, the revision of pay made pursuant to the audit objection stands confirmed and the recovery of excess salary alone is set aside and the Writ Petition stands ***partly allowed***. No costs. Connected M.P. is closed.

[S.M.S.J.] [C.K.J.]
20.06.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
veda

To

1. The Secretary to Government,
Home (Courts) Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Registrar General,
High Court, Madras – 600 104.
3. The Chief Judicial Magistrate,
Cuddalore District, Cuddalore.
4. The Principal District Judge,
Cuddalore District, Cuddalore.



WEB COPY



W.P.No.12829 of 2024

S.M.SUBRAMANIAM, J.
AND
C.KUMARAPPAN, J.

veda

Order in
W.P.No.12829 of 2024

20.06.2024