



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**

**WP No.30009 of 2022
And
MP No.29419 of 2022**

M.Nicholas @ Mariyappa

.. Petitioner

-VS-

1.The Registrar General,
High Court of Madras,
Chennai-600 104.

2.The II Additional District Judge,
Tindivanam,
Villupuram District.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of Certiorari, calling for the entire records



relating to the order dated 26.09.2022 made in Office Order No.64/2022 on the file of the second respondent herein and quash the same.

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For Petitioner : Mr.C.Munusamy

For Respondents : Mr.V.Vijay Shankar

ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The revised pay fixation effected vide proceedings of the second respondent-II Additional District Judge, Tindivanam dated 26.09.2022, is sought to be quashed in the present writ petition.

2. The petitioner joined as Driver in the Office of the Chief Judicial Magistrate, Vilupuram on 08.06.1994.

3. It is not in dispute that the petitioner was awarded Selection Grade on completion of 10 years of service with effect from 08.06.2004. His



pay was revised pursuant to the Pay Commission recommendations to Rs.5,200 – 20,200 (Grade Pay Rs.2,400). After implementation of the Seventh Pay Commission scales of pay and the pay of the petitioner was fixed at Rs.36,300/- with effect from 01.01.2006, with reference to his pre-revised pay scale of Rs.5,200 – 20,200 (Grade Pay Rs.2,400). Accordingly, the petitioner was receiving the Selection Grade Pay admissible with effect from 08.06.2004.

4. In April 2018, the Family Court Judge, Villupuram, under whom the petitioner was working, issued orders granting Special Grade to him with effect from 08.06.2014, on completion of 10 years of service in the Selection Grade Post. Consequent to the award of Special Grade, the pay of the petitioner was revised.

5. When the petitioner was drawing the Special Grade Pay as admissible to the post of Driver with effect from 08.06.2014, he made a representation on 01.06.2018 to the Judge, Family Court, Villupuram, seeking enhanced fixation of pay with retrospective effect from 01.01.2006 based on the Government Letter No.63305/Pay Cell/2010-1, Finance



Department, dated 08.11.2010. Accepting the same in proceedings dated 09.07.2018, the Judge Family Court, Villupuram ordered re-fixation of pay retrospectively from 01.01.2006 in the pay band of Rs.9,300 – 34,800 – (Grade Pay Rs.4200). The revision effected with effect from 01.01.2006 was identified as an error, since the petitioner was awarded Special Grade in the post of Driver with effect from 08.06.2014. The retrospective revision of pay to the petitioner with effect from 01.01.2006 was found to be erroneous as the petitioner was not entitled for such revision based on the Government letter dated 08.11.2010.

6. The learned counsel for the petitioner would submit that the petitioner has submitted a representation and based on the said representation, pay was revised with effect from 01.01.2006. Thus he has not committed any fraud or misrepresentation for securing revised scale of pay retrospectively with effect from 01.01.2006.

7. Mr.V.Vijay Shankar, learned counsel for the respondents would oppose the contentions raised on behalf of the petitioner by stating that there was a misrepresentation on the part of the petitioner, while



submitting the representation to the Judge, Family Court, Villupuram. Based on the said representation, the Establishment has revised the pay retrospectively with effect from 01.01.2006. Thus the revision itself was found to be erroneous. Consequently, the impugned order has been passed. Therefore, the present writ petition is liable to be rejected.

8. We have heard the respective learned counsels appearing on either side and also perused the original files produced before this Court.

9. On 01.06.2018, the petitioner in his own handwriting submitted a representation to the Judge, Family Court, Villupuram. In the said representation, he has stated that he was receiving Selection Grade Pay in the post of Driver with effect from 08.06.2004. Accordingly, made a request to the Judge, Family Court, Villupuram to revise his pay retrospectively with effect from 01.01.2006 based on the Government Letter dated 08.11.2010.

10. The said Government Letter reveals that in the case of employees, who have exercised their option to come over to the revised



scales of pay on the date of their award of Selection Grade/Special Grade between 01.01.2006 and 31.05.2009, are eligible for revision of scale of pay.

11. Perusal of the entire Government Letter would reveal that the petitioner is not falling under any of the category. The petitioner was awarded with Selection Grade in the year 2004 and Special Grade with effect from 08.06.2014.

12. Regarding the misrepresentation, it is apparent, since the petitioner, in his representation dated 01.06.2018, has suppressed the fact that he was already granted Special Grade in the post of Driver with effect from 08.06.2014. Conveniently, he has stated that he was awarded Selection Grade from 08.06.2004. But as on the date of representation on 01.06.2018, the petitioner was receiving Special Grade scale of pay in the post of Driver with effect from 08.06.2014.

13. That being the factum, the petitioner has misrepresented the facts for the purpose of securing retrospective revision of scale of pay with



effect from 01.01.2006.

14. In view of the fact that the revision of scale pay was granted pursuant to the representation of the petitioner, he is not entitled to avail the benefit of the principles laid down in the case of **State of Punjab and Others vs. Rafiq Masih (Whiter Washer) and Others [(2015) 4 SCC 334]**. The recovery of excess salary can be set aside only in case where there is no misrepresentation or undertaking by the employee concerned.

15. In the present case, there was a misrepresentation for securing revised scale of pay with retrospective effect from 01.01.2006 and the Establishment also committed an error in not scrutinising the eligibility properly by verifying the Pay Rules and the Government Orders. On what basis such revision of scale of pay was granted with retrospective effect from 01.01.2006 by the Establishment, is to be enquired into by the learned Principal District Judge, Villupuram. In the event of any lapses, dereliction of duty or negligence on the part of the officials of the Establishment, all suitable actions are to be initiated.



16. Mr.C.Munusamy, learned counsel for the petitioner would submit that such benefits are granted to some other Drivers in other Districts.

17. Mr.V.Vijay Shankar, learned counsel appearing on behalf of the respondents relying on the response from the Registrar-General, High Court of Madras, made a submission that except in two cases, no such erroneous fixation was made across the State of Tamil Nadu and in respect of those two cases, actions are already taken to recover the excess salary paid to the employees concerned. This being the submission, the present writ petition deserves no merit consideration.

18. Thus, with reference to the order impugned passed by the second respondent-II Additional District Judge, Tindivanam in proceedings dated 26.09.2022, we do not find any infirmity. The petitioner is not eligible to get any revision of scale of pay based on the Government Letter dated 08.11.2010, since he was receiving Special Grade Pay in the post of Driver with effect from 08.06.2014.



19. Accordingly, the present writ petition stands dismissed.

However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

16-02-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

- 1.The Registrar General,
High Court of Madras,
Chennai-600 104.
- 2.The II Additional District Judge,
Tindivanam,
Villupuram District.



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