



W.P.No.30202 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

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CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.20202 of 2019

G.Malathi

... Petitioner

Vs.

1.The Family Court Judge,
Family Court,
Villupuram.

2.The Registrar General,
High Court of Madras,
Chennai.

3.The Accountant General,
Office of the Accountant General (A&E),
No.361, Anna Salai,
Chennai – 600 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by 3rd respondent in No.AG (A & E)/PEN P02/2/10224367, dated 25.04.2019 and the consequential order of



W.P.No.30202 of 2019

recovery passed by the 1st respondent in office order No.76/2019, dated 08.07.2019 and quash both the orders and direct the respondents to refund the recovered amount of Rs.4,65,159/- with interests and to provide pension by taking the petitioner's Selection Grade as Rs.4200/-.

For Petitioner	: Mr.R.V.Rajkumar
For R1 and R2	: Mr.V.Balamurugan
For R3	: Mr.V.Vijayshankar

ORDER

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

The revision of scale of pay of the petitioner restricting his pay as applicable to the next level promotional post as done by the Accountant General of Tamil Nadu is sought to be quashed in the present writ proceedings.

2. The petitioner joined as Senior Bailiff/Bailiff on 20.12.1995 carrying the scale of pay to Rs.975-1660 as per the 5th Pay Commission scale of pay. Pursuant to the 1998 Pay Rules, the scale of Pay of the petitioner was re-fixed as Rs.3200-85-4800. On completion of 10 years of service, the petitioner was awarded Selection Grade with effect from 24.12.2005 carrying



W.P.No.30202 of 2019

pay as Rs.4000-100-6000. After implementation of the Pay Rules of the year 2009, the scale of pay of Senior Bailiff was re-fixed as Rs.5200-20200+2000 Grade Pay and on the recommendation of the One Man Commission, it was further revised as Rs.5200-20220+2400 Grade Pay.

3. In lieu of Selection Grade/Special Grade, 3% increment was provided to the employees for those who are awarded Selection Grade after 01.06.2009. Accordingly, the pay of the writ petitioner was revised and he was continuously receiving the said scale of pay without any interruption. Suddenly, an audit objection was raised stating that the revision of pay granted to the writ petitioner was erroneous and in violation of the Pay Rules and the Government Orders issued. The Selection Grade scale of pay fixed in favour of the petitioner was over and above the scale of pay of the next level promotional post. Therefore, the pay of the petitioner is to be restricted to the next level promotional post of the Senior Bailiff. Pursuant to the Audit Objection, consequential revision of pay was ordered by the Accountant General of Tamil Nadu and recovery was ordered. The said order passed by the Accountant General of Tamil Nadu in proceeding dated 25.04.2019 came to be challenged in the present writ petition.



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4. Mr.V.Rajmumar, learned Counsel for the petitioner would mainly contend that there is no promotion from the post of Senior Bailiff to the post of Assistant. There are promotional opportunities to the post of Senior Bailiff but by way of transfer of service to category-V class IV in the Judicial Ministerial Service Rules. In the present case, the petitioner was awarded Selection Grade in the post of Senior Bailiff. Therefore, the pay initially fixed on award of Selection Grade was found to be erroneous and over and above the scale of pay applicable to the next level promotion post.

5. The Accountant General of Tamil Nadu filed a Counter affidavit stating that the disputed issues is no longer *res integra* for it has been stood determined authoritatively on 11.02.2021 by the First Bench of the High Court of Madras in the case of **Shri N Ramakrishnan** (WA No.312/2020). Following the Judgment dated 11.02.2021, the First Bench of the Madras High Court dismissed the pleas of similarly placed petitioners on 15.03.2022, in a batch of [W.P Nos.5872, 20185, 20222, 20228, 15432, 15433 and 17540 of 2021 (Sri J.Gnanaprakasam and others)]. The claim of the petitioner is not admissible of this short ground alone.



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6. The Counter Affidavit filed by the 3rd respondent/Accountant General reveals the following:

4. subsequent to the implementation of the Tamil Nadu Revised Scales of Pay Rules, 2009 (implemented under G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009), the Government of Tamil Nadu introduced the revised Pay Bands applicable to the employees moved to Selection/Special Grades prior to 01.01.2006 and in respect of whom the revised Pay Band of the Ordinary Grade has been enhanced by the subsequent One Man Commissions Recommendations.

5. the mode of fixation of pay in Selection Grade/Special Grade of various Pay Bands as per G.O.234 dated 01.06.2009 has been prescribed by the Government of Tamil Nadu in letter No.63305/pay cell/2010-1 dated 08.11.2010. Para 4(i) of the letter stipulates that:

“The revised Selection Grade/Special Grade scales of pay in the case of employees awarded Selection Grade/Special Grade prior to 1.1.2006 and in whose cases the Ordinary Grade scales of pay have been revised based on the recommendations of One Man Commission/further order of Government thereon shall be fixed as per the scales of pay indicated in the Annexure – I to this letter following the same



WEB COPY



W.P.No.30202 of 2019

methodology of fixation of pay in the Selection Grade/Special Grade scales of pay of employees as was done in pre-2006 scales of pay as indicated in Appendix-II of G.O.Ms.No.162, Finance (PC) Department, dated:13.04.1998 subject to the same condition stipulated therein that if the revised Selection Grade/Special Grade scales of pay indicated in the Annexure-I happens to be higher than the first level/second level promotion posts, then in such cases only the revised Selection Grade/Special Grade scales of pay should be restricted to the level of their first level and second level promotional posts respectively.”

6.....the Scales of pay or Pay Band applicable to the posts of Senior Bailiff as revised in various Pay Commission Recommendations are as under:

- (i) VI PCR vide G.O.162 dated 13.04.1998 read with the Schedule II thereunder.*
- (ii) VII PCR vide G.O.234 dated 01.06.2009 read with G.O.956 Home (Courts V) Department dated 10.02.2011.*

Post	G.O.162 dt.13.04.1998 (Rs.)	G.O.234 Read with G.O.956 & 45 & Letter dated 08.11.2010 (Rs.)
<i>Senior Bailiff</i>	3200-85-4900	5200-20200 + 2400 GP
<i>Selection Grade Senior Bailiff</i>	4000-100-6000	9300-34800 + 4200 GP Restricted to 5200-20200 + 2800 GP
<i>Assistant</i>	4000-100-6000	5200-20200+2800 GP



7.....in the case of the petitioner who was holding the post of Selection Grade Senior Bailiff as on 01.01.2006, the first level promotional post is Assistant. Therefore, the Grade Pay of the Selection Grade Senior Bailiff post of the petitioner as per Annexure I to the Government letter dated 08.11.2010 is though Rs.4200/-, the same should be restricted to Rs.2800/- that is, the Grade Pay applicable to the first level promotional post of Assistant, as per the provisions of para 4(i) of the letter dated 08.11.2010. Thus her pay was fixed in the revised pay band of Rs.5200-20200 + Grade Pay of Rs.2800/-, which is applicable to the next level promotional post of Assistant by this Respondent while admitting her pensionary benefits.

8.....the petitioner, without taking into account the stipulation in para 4(i) of the letter dated 08.11.2010, claims the benefit as per Annexure I thereto, which is not in order. Thus, the claim of the petitioner is not tenable in terms of the restriction stipulated in the Government letter dated 08.11.2010.

9.....tracing the history of the G.O.s issued on the basis of the recommendations of the earlier Pay Commission would reveal that all along, the pay of the Selection Grade lower post is not higher than the pay of the Ordinary Grade Promotional post. Whenever the pay of the Selection Grade lower post happens to be higher than the pay of the Ordinary Grade Promotional post, the stipulation is imposed to the



WEB COPY



W.P.No.30202 of 2019

effect that the pay of the Selection Grade of the lower post has to be restricted to the pay of the Ordinary Grade of the Promotional post. The Time Scales of Pay applicable to the posts of Ordinary Grade/Selection Grade Senior Bailiff and Ordinary Grade Assistant in terms of the G.O.s issued in pursuance of the earlier Pay Commissions are as follows:

Post	G.O.666 dated 27.06.1989 read with G.O.304 dated 28.03.1990 (Rs.)	G.O. 162 dt. 13.04.1998 (Rs.)	G.O.234 dt.01.06.2009 read with G.O.956,G.O.4 5 & Govt.letter dated 08.11.2010 (Rs.)
Senior Bailiff Ordinary Grade	975-1660	3200-85-4900	5200-20200 + 2000 GP
Senior Bailiff Selection Grade	1200-2040	4000-100-6000	5200-20200 + 2400 GP
Assistant Ordinary Grade	1200-2040	4000-100-6000	5200-20200 + 2400 GP

10.Para 4 of G.O.304 dated 28.03.1990 provides



as follows: “wherever the promotion post happens to be on a lower scale of pay than the Selection Grade scale of pay, employees in such posts are eligible for the selection grade scale as applicable to the promotion post only.”

11.....Para 4 (ii) of G.O.162 dated 13.04.1998 also regulates the pay of the selection grade posts as under:

“For posts having promotional posts, if the Selection Grade scale of pay is higher than the pay scale of the promotional post, the Selection Grade scale should be limited to the pay scale of the first level promotion post.”

12.....following the above principle that forms the genesis of fixation of pay in the Selection Grade of the lower post, the Government letter dated 08.11.2010 also provided for a similar stipulation restricting the pay of the Selection Grade lower post to the Ordinary Grade Promotional post, as extracted in Para 4 supra.

13.....the Government have been following a consistent policy of restricting the pay of the Selection Grade of the lower post to the pay of the Ordinary Grade Promotional post.”

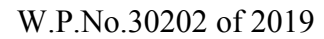
7. In view of the facts and the principles discussed above with



W.P.No.30202 of 2019

reference to the Pay Rules, and Government Orders as applicable, we do not find any error regarding the re-fixation of pay done through the impugned proceedings. However, the revision of pay was granted not on account of any misrepresentation on the part of the petitioner. No undertaking was obtained at the time of grant of revision of pay by the employer. Thus, the recovery of excess salary already paid at this length of time would result in hardship to the writ petitioner. Therefore, we are inclined to set aside the recovery alone. Accordingly, the impugned order of revision of scale of pay restricting the pay of the writ petitioner stands confirmed and the recovery of excess salary already paid alone is set aside. Any excess salary, if recovered already alone is directed to be repaid within a period of twelve weeks from the date of receipt of a copy of this order.

8. Accordingly, this Writ Petition stands partly allowed. There shall



[S.M.S.J.] [K.R.S.J.]
15.03.2024

To

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S.M.SUBRAMANIAM,J.
AND
K.RAJASEKAR,J.

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