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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.Nos.35261 of 2022 and 5548 of 2023

and

W.M.P.No.34710 of 2022

W.P.No. 35261 of 2022

A.Anandan

... Petitioner

Vs.

1. The Principal District and Sessions Judge,
Tiruvallur.
2. The District Treasury,
Thiruvallur – 602 001.
3. The Accountant General (A&E),
Teynampet, Chennai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent herein relating to the impugned order of recovery dated 14.09.2022 passed by the 1st respondent, quash the same as unsustainable in law and consequently direct the respondents herein to refund the recovered sum of Rs. 6,49,854/- (Rupees Six Lakhs Forty Nine Thousands Eight hundred and Fifty Four only) to the petitioner.

For Petitioner

: Mr.R.Dhanasekar



For R1 : Mr.Karthick Ranganathan

For R2 : Mrs.P.Raja Rajeswari,
Government Advocate

For R3 : Mr.V.Vijay Shankar

W.P.No. 5548 of 2023

M.Manjula

... Petitioner

Vs.

1. The Registrar General, High Court of Judicature at Madras,
High Court Buildings, Chennai – 600 104.

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 – 600 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the 3rd respondent in Dis. No. 1091/ 2022 dated 27.10.2022 revising and re-fixing the scale of pay of the petitioner and consequential order of recovery passed by the 3rd respondent in Dis. No. 1268/ 2022 dated 07.12.2022 and quash the same and direct the respondents to restore the pay scale with grade pay and thereby refund a sum of Rs. 11,79,365/- (Rupees Eleven Lakhs Seventy Nine Thousand three hundred and sixty five) recovered from petitioner's DCRG and unearned leave salary along with 12% interest.

For Petitioner : Mr.S.N.Ravichandran



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W.P.Nos.35261 of 2022 and 5548 of 2022



For Respondents

: Mr.V.Vijay Shankar

COMMON ORDER

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

These Writ Petitionss have been instituted questioning the validity of the refixation 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 issues raised in these Writ Petitions are 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 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 petitioners are 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 these writ petitioners, 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 Petitions are filed challenging the fixation as well as the consequential recovery imposed by the authorities.

4. As far as the pay fixation in these Writ Petitions are 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. All the employees before us served in Group C and Group D services. Many of them have already attained the age of superannuation and are pensioners. In the event of any recovery at this length of time, the same would cause prejudice to such employees and they may not be in a position to repay the salary that they have already received several years back. Therefore, the Courts have consistently held that recovery of excess pay from these 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:-

“ 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



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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 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



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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 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 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;*
- (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. Therefore, we are of the considered opinion that errors in fixation is to be corrected, which was done in the present case. The employees are 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 3rd respondent, 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 petitioners have served in Group C and Group D services and subsequently, attained the age of superannuation.



Thus, the recovery would cause hardship to them.

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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, these Writ Petitions stand allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

(S.M.S.,J.) (K.R.S.,J.)
15.02.2024

skr
Index : Yes
Speaking order
Neutral Citation : Yes



To

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S.M.SUBRAMANIAM, J.

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