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W.P.No.32390 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

W.P.No.32390 of 2023

and

W.M.P.Nos.32023 & 32024 of 2023

R.Vasugi

... Petitioner

Vs.

- 1.The Registrar General,
High Court, Madras,
High Court Campus,
Chennai – 600 104.
- 2.The Principal Secretary to Government,
Home (Courts-V) Department,
Fort St. George,
Chennai – 600 009.
- 3.The Principal District Judge,
Dharmapuri.



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4.The Principal Accountant General (A & E),
AG's Office (Audit) Complex,
Anna Salai,
Roast Revor Garden,
Teynampet,
Chennai – 600 018.

5.The District Treasury Officer,
Dharmapuri.

6.The Family Court Judge,
Dharmapuri District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 19.12.2022 vide ROC No.1908/2022 passed by the 6th respondent and quash the same as illegal and consequently, direct the respondents to continue to pay at the existing fixation of pay and not to recover the alleged excess amount paid to the petitioner.

For Petitioner	:	Mr.A.Sakthivel
For R1, R3, R4 & R6	:	Mr.V.Vijay Shankar
For R2 and R5	:	Mr.P.Anandakumar Government Advocate



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ORDER

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

The order of re-fixation and the consequential recovery imposed on the petitioner are under challenge in the present writ petition.

2.The writ petitioner was initially appointed as Dalayat (known as Office Assistant) in the Judicial Department. Thereafter, she was promoted to various posts and presently, she is working as Grade-I Bench Clerk.

3.The authorities verified the service records and found that excess pay fixation was made in the case of the petitioner. Accordingly, 5% personal pay granted to the writ petitioner in the post of the Examiner of Copies, with effect from 02.11.2005, was found to be erroneous. That apart, 3% promotional increment granted, with effect from 01.07.2010, was also identified as an erroneous fixation. In respect of the above two objections, impugned orders are passed revising the scale of pay of the petitioner and imposing recovery.



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4.The learned counsel for the petitioner would submit that the petitioner is eligible for 5% personal pay since she is falling under one of the four categories enumerated in G.O.Ms.No.664, so also the petitioner was promoted to the post of Head Clerk and thus, she is eligible to draw 3% promotional increment.

5.The learned counsel for the respondent would oppose the contention of the petitioner by stating that the petitioner was not promoted but redeployed. Redeployment cannot be construed as promotion. Thus, the grant of 3% promotional increment is inadmissible to the post of the petitioner and thus, the audit objection was raised and consequently, the recovery order has been issued.

6.We have considered the rival submissions made on behalf of the parties. It is not in dispute that the petitioner was redeployed to the post of Bench Clerk Grade III. Redeployment to the post of Bench Clerk Grade III from the post of Assistant, cannot be construed as promotion. The post of Assistant and Bench Clerk Grade III carry identical scale of pay and



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therefore, it is not a promotional post. Since the petitioner's redeployment to the post of the Bench Clerk Grade III is not a promotion, the 3% promotional increment granted to the petitioner is an error committed by the establishment and therefore, the 3% promotional increment granted is to be recovered from the petitioner.

7. In respect of redeployment not amounting to promotion, the Division Bench of this Court, in the case of ***V.Rajaseskaran Vs. Principal District Judge Salem, dated 29.09.2021, in W.P.No.5696 of 2021***, held as follows:

“4. So as not to allow the personnel to stagnate in one position and to rotate the employees from one section or department to another, the exercise of redeployment is undertaken by the employer. Redeployment may also happen upon the employer finding a particular employee more suitable in a different position than the position where such employee has been placed. Since redeployment does not entail any privilege or benefit, as to how and when and in what manner the exercise of redeployment would be conducted, is not something that a concerned employee may assert. It is possible that one employee may not be redeployed whereas his colleagues



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in the same post may all be redeployed.

5. The exercise of redeployment, if appreciated, will provide the key to the matter. Redeployment is for the administrative purpose and may or may not be as per the exigencies. It may be a routine redeployment or it may be a redeployment based on a particular need or for other purposes that the employer may think it appropriate to bring about greater efficiency in the functioning. It does not give or take away any benefit or right and, as such, an employee who has been redeployed or another who has not been considered for being redeployed cannot raise any grievance since there is no material benefit and, consequently prejudice suffered by the concerned employee. In a sense, it is akin to a transfer from one department to the other and the only benefit or advantage may be that the department could be closer to the gate or further away from the gate.”

8.As far as the 5% personal pay granted with effect from 02.11.2005 is concerned, during the relevant point of time, the petitioner was working in the cadre of Examiner of Copies which is Group-D post.



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9. Applying the principle laid down in the case of ***Punjab Vs. Rafiq***

Masih (White Washer) reported in (2015) 4 SCC 334, excess salary need not be recovered from the retired employee. In the event of any such recovery, it will result in hardship to the retired employee. Therefore, the recovery of 5% personal pay alone is set aside. The re-fixation done in accordance with pay rules and Government orders in force stands confirmed. The petitioner is eligible to draw salary based on the revised fixation of pay, as done by the respondents in the impugned proceedings.

10. Therefore, recovery of 5% personal pay alone is set aside. The grant of 3% promotional increment is directed to be recovered.

11. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) (K.R.S., J.)
05.03.2024

mkn

Internet : Yes



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Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

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S.M. SUBRAMANIAM, J.



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