



W.P.(MD).No.12698 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.12698 of 2023

and

W.M.P.(MD)No.10712 of 2023

R.Velusamy

... Petitioner

-VS-

1.The Secretary to Government,
Finance (Pay Cell Department),
Fort St.George,
Chennai-600 009.

2.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-600 004.

3.The Superintendent of Police,
Tenkasi District,
Tenkasi.

4.The Principal Accountant General (A and E),
No. 361, Anna Salai,
Chennai 600 018.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 4th and 3rd respondents in connection with the impugned order passed by



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them vide their proceedings in No. P04/1/10430841/ADK/65 dated 20.09.2022 and in C.No. B1/460/34479/2022 dated 14.12.2022 respectively and quash the both as illegal, arbitrary and consequently direct the respondents to re-fix the petitioner pay and pension on par with the petitioner's batchmates and juniors and thereby direct them reimburse the recovered amount of Rs.1,74,363/- in the light of the order passed by the Honble Supreme Court in State of Punjab & Others vs. Rafiq Masih (White Washer) and Others reported in 2015 (4) Supreme Court Cases 334 and pay enhanced pension within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.S.Shanmugavel (R1 to R3)

Additional Government Pleader

Ms.S.Mahalakshmi (R4)

ORDER

The instant writ petition has been filed by a retired Special Sub-Inspector of Police, challenging the order passed by the fourth respondent herein and the consequential order of recovery passed by the third respondent.

2. The writ petitioner herein was originally appointed as Grade II Police Constable and he was upgraded to Grade I Police Constable on 25.05.1998 and later, upgradation was granted as Head Constable on



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25.05.2003. These two upgradations were treated as promotions and increments were granted by the concerned Superintendent of Police. When the pension proposals were forwarded by the concerned department to the fourth respondent, the fourth respondent found out that upgradations will not carry any monetary benefits, have been conferred increments upon the writ petitioner. Therefore, the fourth respondent has passed the impugned order dated 20.09.2022 pointing out Government Letter (MS) No.737, Home (Police V) Department, dated 18.08.2010 to the effect that advancement of upgradation to the posts of Grade I Police Constable and Head Constable are only for consideration of next upgradation and the individual should not claim any financial benefits.

3. Following the order of the fourth respondent, consequential order of recovery was passed by the third respondent on 14.12.2022 seeking for recovery of a sum of Rs.1,74,363/-, which is alleged to be excess payments made to the writ petitioner, in view of the increments conferred upon him at the time of upgradation to the posts of Grade I Police Constable and Head Constable, and these two orders are challenged in this writ petition.



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4. According to the learned counsel appearing for the writ petitioner, the writ petitioner is receiving the said benefits from September, 2010 onwards. However, when he was about to retire in October, 2022, the impugned order has been passed by the fourth respondent on 20.09.2022 and the consequential order of recovery has been passed by the third respondent after his retirement. This would cause great prejudice to him. Hence, he has challenged the impugned orders.

5. Per contra, the learned counsel appearing for the fourth respondent, relying upon Government Letter (MS) No.737, Home (Police V) Department, dated 18.08.2010 and the proceedings of the Director General of Police, dated 26.03.2015, contended that the upgradation to the posts of Grade I Police Constable and Head Constable are only for the purpose of advancing upgradation to the next level post, which would not carry any monetary benefits. Therefore, the writ petitioner has been granted monetary benefits by way of increments erroneously by the concerned authorities. This erroneous conferment of increments have been found, when the pension proposals were forwarded by the concerned department to the fourth respondent. Hence, the order dated 20.09.2022 impugned in this writ petition has been passed and he prayed for sustaining the orders impugned in this writ petition.



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6. The learned Additional Government Pleader appearing for the respondents 1 to 3, by relying upon paragraph No.3 of the counter affidavit, contended that the writ petitioner's pay was erroneously fixed without properly considering the Government Letter (MS) No.737, Home (Police V) Department, dated 18.08.2010 and therefore, the pay scale of the writ petitioner has to be revised and the excess payment for a sum of Rs.1,74,363/- has to be recovered from him. When the pay scale of the writ petitioner has been erroneously fixed, the contention of the writ petitioner that his batchmates and his juniors are receiving the said pay scales are not legally sustainable. He further contended that the judgment of the Hon'ble Supreme Court in the case of *State of Punjab & Others vs. Rafiq Masih (White Washer) and Others* reported in *2015 (4) Supreme Court Cases 334* is not applicable to the case of the writ petitioner.

7. I have carefully considered the rival submissions made on either side and perused the materials placed before this Court.

8. It could be seen from the Government Letter (MS) No.737, Home (Police V) Department, dated 18.08.2010 that the police personnel, who were recruited during the year 1987-1988 were upgraded to the post of Grade I



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Police Constable with effect from their actual date of completion of ten years of service in the rank of Grade II Police Constable. They were also upgraded to the post of Head Constable with effect from the actual date of completion of five years of service in the rank of Grade I Police Constable. It is further pointed out that these benefits are conferred only for consideration of next upgradation and the individual should not claim any financial benefits.

9. Therefore, it is clear that despite upgradation, the writ petitioner would not be eligible for any monetary benefits. However, erroneously, without any misrepresentation or fraud on the part of the writ petitioner, the said benefits have been conferred upon the writ petitioner. The benefits have been conferred upon him for more than 12 years. When the writ petitioner was about to retire, and after his retirement, the orders impugned in this writ petition have been passed.

10. The Hon'ble Supreme Court, in the case of ***State of Punjab & Others vs. Rafiq Masih (White Washer) and Others*** reported in ***2015 (4) Supreme Court Cases 334*** has categorically held that when a benefit has been conferred upon an individual for more than five years, the same should not be recovered and that too, when the individual is about to retire or he has



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already retired. In the present case, the writ petitioner is enjoying the benefits for more than twelve years and just before his retirement, the order impugned in this writ petition dated 20.09.2022 has been passed and the consequential impugned order dated 14.12.2022 seeking for recovery of a sum of Rs.1,74,363/- has been passed after his retirement.

11. In view of the above said deliberations, the orders impugned in this writ petition are set aside with regard to the recovery alone and this writ petition is partly allowed accordingly. However, the authorities are at liberty to refix the pay scale of the writ petitioner, as per the Government Letter (MS) No.737, Home (Police V) Department, dated 18.08.2010 and release the pensionary benefits and other terminal benefits in accordance with the said Government Letter. The refixation orders and the disbursement of the benefits, based upon the refixation shall be passed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2024

NCC : Yes/No
Index : Yes / No
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R.VIJAYAKUMAR, J.

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To

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- 2.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-600 004.
- 3.The Superintendent of Police,
Tenkasi District,
Tenkasi.

Order made in
W.P.(MD)No.12698 of 2023

Dated:
27.09.2024