THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.817 of 2024
and
C.M.P. Nos.5639 & 5640 of 2024

K.Prabhakar
(Office Assistant Special Grade, Retd.,)
No.47/24, 7th Cross Street,
Trustpuram, Kodambakkam,
Chennai - 600 024. ... Appellant

versus

1.The Principal Accountant General,
Office of the Accountant General (A & E),
Tamil Nadu,
No.361, Anna Salai, Teynampet,
Chennai - 600 018.

2.The Branch Officer
Office of the Accountant General (A & E),
Tamil Nadu,
Authorisation of Revision of Pension/Gratuity/Commutation,
No.361, Anna Salai,
Teynampet, Chennai - 600 018.

3.The Joint Director,
Industrial Safety & Health Department,
Guindy, Kancheepuram,

Chennai - 600 032. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed in W.P.No.2041 of 2023 dated 14.12.2023.

For Appellant	:	M/s.A.Pramila
For Respondents	:	Mr.P.Mano Rajan Standing Counsel - R1 & R2

J U D G M E N T

(Judgment of the Court was made by ***R.SUBRAMANIAN, J.***)

Challenge in this appeal is to the order of the Writ Court made in W.P.No.2041 of 2023 dated 14.12.2023 wherein the appellant questioned the order of the second respondent dated 29.11.2022 refixing his pension and directing the recovery.

2. The appellant was appointed as Office Assistant (Special Grade) on 22.09.2014 and he retired on attaining the age of superannuation on 30.04.2022. Originally, the Department had sent a pension proposal based on the last drawn pay of the appellant which was Rs.34,400/-. Then the office of the Accountant General raised objections and upon on such objections, it was found that the rate of Dearness Allowance was taken as

47% instead of 24%. Therefore, a revised proposal was sent to the first respondent on 31.10.2023.

3. Contending that having sent a proposal granting 47% of the Dearness Allowance, the respondents cannot revise the same and reduce it to 24%, the appellant sought to quash the refixation done on 29.11.2022. The Writ Petition was resisted by the Government contending that in the original proposal the Dearness Allowance was adopted as 47% erroneously and later it was found that the appellant would be entitled to only Dearness Allowance calculated at 24%.

4. Pending the Writ Petition, a clarification was sought from the Government and the Government by its letter dated 31.10.2023 clarified the position and stated that in the case of employees opting to come under the revised scale of pay on subsequent dates after 01.01.2006, only 24% Dearness Allowance would be taken into account only for the purpose of fixation of pay in the revised pay structure.

5. The Writ Court found that the appellant has opted to come into the revised pay scale only on 01.01.2006 and therefore the Dearness Allowance should be calculated only at 24%, not at 47%. Therefore, the Writ Court upheld the revised proposal dated 31.10.2023. However taking note of the judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***, the Writ Court has taken care to conclude that the excess amount paid shall not be recovered from the appellant.

6. Though the learned counsel for the appellant would seek to contend that she is entitled to 47% Dearness Allowance, she is unable to substantiate the said claim. She would rely upon G.O.107 dated 27.03.2008 in support of her contention but that deals with the period after 01.07.2007 to 01.01.2008. Therefore the said Government order cannot be made applicable to the appellant. The G.O.(Ms.)234 dated 01.06.2009 makes it very clear that the basic pay as on 01.01.2006 should be multiplied by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10. There is nothing in the said Government Order to justify the claim of the appellant that he would be entitled to Dearness Allowances @ 47%.

7. The Writ Court having found that it is a mistake in calculation by the Department and dismissed the Writ Petition while protecting the appellant from recovery, inasmuch as the claim of the appellant that he would be entitled to 47% of the Dearness Allowances, it is not supported by any materials.

8. Therefore, we see no reason to interfere with the order of the Writ Court. Hence, the Writ Appeal fails and it is accordingly ***dismissed***. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(R.S.M., J.) (G.A.M., J.)
12.02.2025

Speaking order
Index : No
Neutral Citation : No

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To

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