



WP No. 29262 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2025

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THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 29262 of 2019

1. S.Narayanan

No.2 Maruthi Bhavanam 2nd Main

Road Nanganallur Chennai-61

Petitioner(s)

Vs

1. The Accountant General

(Accounts And Entitlements) 361 Anna

Salai Teynampet Chennai-18

2.The Inspector General of

Prisons Whannels Road Egmore

Chennai-8

3.The Superintendent

Central Prison Vellore-632 002

4.Branch Officer

Office of the Accountant General 361,

Anna Salai Teynampet chennai-18

Respondent(s)



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PRAYER: Writ petition is filed under Section 226 of the Constitution of India for issuance of a Writ of Certiorarified mandamus calling for the records leading to the issue of pension and retirement benefits authorized by the 1st and 4th respondent in No AG (A and E)/ PEN/ PO / 10614483/ 1 / R0614483 dated 26.8.2016 and consequential order in No PO6/ 10618780/ 4 / R0614483 dated 12.12.2018 and quash the same and directing the 1st and 4th Respondent to authorize the Pension and retirement benefits as sanctioned by the 3rd Respondent.

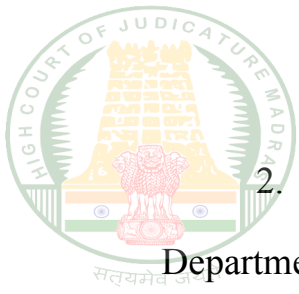
For Petitioner(s): Mr.R.Thomas

For Respondent(s): Mr.P.Manorajan
Standing Counsel for AG
for R1 and R4

Mr.V.Umakanth
Government Advocate
for R2 and R3

ORDER

This writ petition has been filed challenging the order of 1st and 4th respondent in No AG (A and E)/ PEN/ PO / 10614483/ 1 / R0614483 dated 26.8.2016 and order in No PO6/ 10618780/ 4 / R0614483 dated 12.12.2018 and consequently to direct the 1st and 4th Respondent to authorize the Pension and retirement benefits as sanctioned by the 3rd Respondent.



2. The petitioner was appointed as Grade II Warder in the Prison Department on 07.05.1984 and he was promoted as Assistant Jailor on 03.08.2012 and retired from service under voluntary retirement scheme on 09.04.2016. The petitioner's pay was stepped on par with his junior I.Karunanithi, Assistant Jailor, Central Prison, Vellore, vide the third respondent's proceedings dated 18.02.2015. Accordingly the last pay drawn by the petitioner was Rs.17,260/-. However, the first respondent has taken the emoluments of the petitioner drawn on 09.04.2016 as Rs.15,460/- instead of Rs.17,260/- and gave authorization accordingly.

3. Mr.R.Thomas, the learned counsel for the petitioner, submitted that no prior intimation has been given to the petitioner before reducing his last drawn pay from Rs.17,260/ to Rs.15,460/- Despite the clarification sought by the petitioner was furnished by the third respondent vide his letter dated 16.02.2016, that was not taken into consideration. The petitioner's junior I.Karunanithi was promoted to the post of Assistant Jailor on 25.06.2014 and he had also not passed the Account test as similar as that of the petitioner. As the petitioner had given representation on 07.01.2015 to the second respondent to get relaxation from passing one of the departmental test, the same is pending without passing any orders.

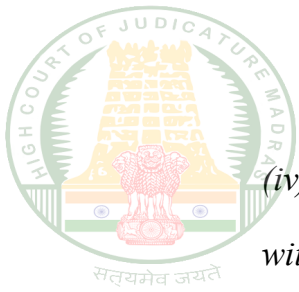
4. Mr.P.Manorajan, the learned Standing Counsel for the first and fourth respondents, submitted that the petitioner is not entitled to stepping up of the



pay on par with other person by name I.Karunanithi as Karunanithi has not been promoted to the post of Assistant Jailor on one and the same day and that he did not draw the same scale of pay in the said post.

5. Mr.V.Umakanth, the learned Government Advocate for the third respondent, submitted that the anomaly between I.Karunanithi and his junior Shankar arose during the year 2012 and the same was rectified on 12.09.2012. But when Karunanithi was promoted to the post of Assistant Jailor, his pay has been fixed at Rs.17,260/- which is higher than that of the petitioner (Rs.15,460/-). The above anomaly was set right by stepping up the petitioner's pay on 18.02.2015. As per Ruling 2 of Rule 22B(ii) of Fundamental Rules, if a junior gets higher pay than the senior in any of the promotional post, the anomaly can be set right, provided the following conditions have to be fulfilled:

- (i) Both the junior and senior officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre;*
- (ii) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;*
- (iii) The anomaly should be directly as a result of the application of Fundamental Rule 22-B. For example, if, even in the lower post the junior officer draws from time to time, a higher rate of pay than the senior by virtue of grant of advance increments, the provisions contained in this order should not be invoked to step up the pay of the senior officer; and*



(iv) *The orders refixing the pay of the senior officers in accordance with the provisions of this order should be issued under Fundamental*

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Rule 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.”

6. The petitioner claims anomaly in the identical post namely Assistant Jailor. The petitioner has been promoted to the said post before his Junior I.Karunanidhi was promoted and they were entitled to draw the scale of pay prescribed for the post of Assistant Jailor. To make it more clear, the post in which the petitioner claims anomaly is Assistant Jailor post which carries same pay scale and not anything as of selection grade or special grade pay in the post of Assistant Jailor. It is seen that the first respondent has misconstrued the second stipulation for getting the benefit of anomaly.

7. It is submitted by the learned Standing Counsel for the first respondent that at the time when the petitioner and his junior I.Karunanithi were promoted to the post of Assistant Jailor, both were not drawing the same scale of pay. The date which has been taken into consideration by the petitioner is 12.09.2012 on which date the pay scale was fixed for the petitioner on his promotion to the post of Assistant Jailor. Just because the petitioner is senior to I.Karunanithi, he has got his promotion earlier than I.Karnanithi. Karunanidhi got his promotion on 25.06.2014 to the same post of Assistant Jailor. When the seniors and juniors



got promotion on different dates, it cannot be claimed that both should be drawing the same scale of pay when they have been promoted.

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8. The fundamental criteria is that whether they have been getting the same scale of pay in the corresponding post which they have been holding at the time when the anomaly has arisen. There is no quarrel that the starting scale for the post of Assistant Jailor was different. It is submitted that the anomaly ought to have arisen in view of exercising option under Rule 22 B of Fundamental Rules by getting the increment in the lower post and thereafter, getting the pay fixed in higher post. The above anomaly is in respect of the anomaly that has arisen at the time when pay is fixed when both the junior and the senior get their promotion in one and the same batch. But here is a case where a person much junior to the person who had promoted later is getting a higher pay than the petitioner.

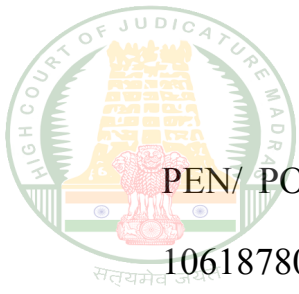
9. The principle of anomaly cannot be interpreted in a very narrow manner that the anomaly should always arise only under the conditions prescribed under Rule 22 B of Fundamental Rules. The junior getting more pay than the senior is always an anomaly irrespective of conditions arising apart from exercising the options under Rule 22 B of Fundamental Rules.



10. So far as the passing of Account test is concerned, there are Rules to relax the passing of the account test if a person who appears five times but could not qualify the same. As the petitioner's representation is still pending with the second respondent, it is for the second respondent to take a call and pass orders. In fact the third respondent has already given promotion to the petitioner and also sanctioned increment in the promoted post and hence the second respondent has to pass an order to ratify the order of the third respondent as though relaxation has already been given to the petitioner from passing the account test in view of his repeated appearance for the test but his inability to get it clear.

11. Had the first respondent sought clarification with regard to the fixation of pay anomaly or allowing the increment to the promoted post to the petitioner without his clearance of the account test, the third respondent could have given the required clarification. It appears that the first respondent has straight away come to a conclusion that the fixation has been wrongly done and that the petitioner's pay should be reduced and his pensionary benefits should be fixed corresponding to the reduced pay. Since the whole exercise has been done on a thorough misconstruction of rules, I feel the order of the first respondent is liable to be quashed.

12. In view of the above stated reasons, the writ petition is allowed and impugned order passed by the first and fourth respondent in No. AG (A and E)/



PEN/ PO / 10614483/ 1 / R0614483 dated 26.8.2016 and order in No PO6/ 10618780/ 4 / R0614483 dated 12.12.2018, are hereby quashed and the second

respondent is directed to ratify the actions of the third respondent in allowing the petitioner to get the relaxation in clearing the account test and third respondent is further directed to represent the pension papers of the petitioner with a copy of the orders of this Court and the first respondent is directed to refix the petitioner's pensionary benefits in accordance with the last drawn pay at Rs.17,260/- and issue orders in this regard, within a period of eight weeks from the date of receiving the pension papers. No costs.

27-02-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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