IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.No.32762 of 2019
and W.M.P.Nos.33187 & 33186 of 2019

C.Radhan,
S/o.Chinnappan
Plot No.5, Indira Nagar,
Senguttai,
Katpadi,
Vellore – 632 007. ... Petitioner

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. The Treasury Officer,
   District Treasury,
   Vellore.

5. The Secretary to Government,
   Finance Department,
   Secretariat,

Chennai – 9.
6. The Branch Officer,
Office of the Accountant General,
361, Anna Salai,
Teynampet,
Chennai – 18. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified Mandamus to call for the records leading to the downward revision of pension and retirement benefits authorized by the first respondent in AG (A&E)/Pen/PO6/10620958/4/R2302624, dated 20.02.2019 quash the same and direct the third respondent to refix the pay of the petitioner as per the representation dated 27.12.2013 exercised by the petitioner and revise his pay and grant higher pension and other retirement benefits.

For Petitioner	:	Mr.R.Thomas
For R1 & R6	:	Mr.P.Manorajan SC for AG
For R4 & R5	:	Mr.Alagu Gautham Government Advocate
For R2 & R3	:	Mr.V.Umakanth

ORDER

The writ petition has been filed challenging the records leading to the downward revision of pension and retirement benefits authorized by the first respondent in AG (A&E)/Pen/PO6/10620958/4/R2302624, dated 20.02.2019 and to direct the third respondent to re-fix the pay of the petitioner as per the representation dated 27.12.2013 and revise his pay and grant higher pension and other retirement benefits.

2. The petitioner who had served as an 'Assistant Jailer' has attained the age of superannuation on 30.06.2010. As per the Government Order in G.O.Ms.No.342 Finance (Pay Cell) Department, dated 14.09.2012, the pay revision has been implemented and as per that the petitioner's pay was revised with notional effect from 01.01.2006 and monetary effect from 01.01.2007. Accordingly the petitioner's pay was fixed at Rs.17,180/- from 01.07.2009.

3. The learned counsel for the petitioner submitted that the above fixation is not correct and the petitioner ought to have been given with the pay fixation at Rs.18,830/- as on 01.07.2010.

4. After a lengthy deliberation, this Court has made all strenuous efforts to understand the nuances of pay fixation in accordance with the Government Orders, guidelines, annexures and appendixes attached therewith.

5. The petitioner had attained the selection grade in the post of Assistant Jailer on 02.09.2001. As per the Government Order in G.O.Ms.No.342 Finance

(Pay Cell) Department, dated 09.12.2011, the Government has ordered that the scale of pay of Assistant Jailer in the present department shall be revised from Rs.5200 - 20200 + G.P. 2400 to Rs.9300 - 34800 + G.P. 4200 notionally with effect from 01.01.2006 and with monetary benefit from 01.09.2011. The above fact was not denied by the respondents also. While fixing the pay of the petitioner the methodology has to be adopted as per the guidelines given in G.O.Ms.234 Finance (PC) Department dated 01.06.2009. As per the rules of re-fixation of pay as laid down in the above Government Order, the following methodology is suggested :

> *" 4. Fixation of Pay in the revised pay structure: The initial pay of a Government employee who elects to be governed by the revised pay structure from 1 January 2006 shall be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have had a lien if it had not been suspended and in respect of his pay in the officiating post held by him, in the following manner, namely:--*
>
> *1. **In the case of all employees** :--*
>
> *(i) The pay in the pay band/pay scale shall be determined by multiplying the existing basic pay as on 1-1-2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.*
>
> *(ii) If the minimum of the revised pay band / pay scale is more than the amount arrived at as per (i) above, the pay shall be fixed at*

the minimum of the revised pay band/pay scale;

(iii) Where, in the fixation of pay, the pay of Government employees drawing pay at two or more consecutive stages in the existing scale gets bunched, that is to say gets fixed, in the revised pay structure at the same stage in the pay band, then for every two stages so bunched, benefit of one increment shall be given so as to avoid bunching of more than two stages in the revised running pay bands. For this purpose, the increment will be calculated on the pay in the pay band only and grade pay should not be taken into account for the purpose of granting increments to alleviate bunching.

(iv) In the case of pay scales in Higher Administrative Grade (HAG) in the Pay Band-4, benefits of increments due to bunching shall be given taking into account all the stages in different pay scales in this grade.

(v) If by stepping up of the pay as above, the pay of a Government employee gets fixed at a stage in the revised pay band/pay scale (where applicable) which is higher than the stage in the revised pay an employee who was drawing pay at the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall also be stepped up only to the extent by which it falls short of that of the former.

(vi) The pay in the pay band will be determined in the above manner. In addition to the pay in the pay band, grade pay corresponding to the existing scale will be payable."

6. There is no quarrel as to the fact that after the petitioner's basic pay had arrived by multiplying the fitment factor of 1.86 and fixing pay at

Rs.10,850/-. The petitioner would fall under the pay band '2' which would represent Rs.9300 - 34800 + G.P. 4200. The pre-revised scale of the petitioner was 5600 + 230 = 5830. 5830 x 1.86 =10843.80 which has been rounded up to next multiplier of 10 as Rs.10,850.

7. The learned counsel for the petitioner claims that had his pay was fixed by allowing him the annual increment from the effective date of 01.01.2006 by having his basic pay as Rs.9300, his pay would have been Rs.11,110/- as he had already drawn 6 increments in the pre-revised scale of pay. So, it is the claimed that the petitioner's revised scale of pay fixed at Rs.10,850 falls below Rs.11,110/- and therefore he is entitled to the bunching benefit as provided under Rule 4(iii) of Tamil Nadu Revised Scales of Pay Rules, 2009.

8. Before shifting to Rule 4(iii), what is stated under Rule 4(ii) of Tamil Nadu Revised Scales of Pay Rules, 2009 is essential and relevant Rule 4(ii) states that if the minimum of the revised pay band or pay scale is more than the amount arrived as per Rule 4(i), the pay shall be fixed at the minimum of the revised pay band or pay scale. This would mean to say that if the minimum of the revised pay band i.e. Rs.9300 is more than the amount arrived as per

applying the multiplying factor of 1.86, then the individual's pay should be fixed at the minimum of the revised pay band / pay scale and thereafter, bunching effect should be given as contemplated under Rule 4(iii). In the instant case the petitioner's revised pay scale is not less than the minimum revised pay band. To put it otherwise, the revised pay of the petitioner fixed at Rs.10,850 is not less than Rs.9300 in order to attract the application of Rule 4(ii).

9. If any individual's revised pay falls below the minimum revised pay band for Rs.9300, then the anomaly is allowed to be redressed by way of allowing a mechanism called 'bunching', and then allowing one increment for every two stages so bunched. For instance, if a person's revised pay is below than the minimum of the revised pay band, while fixing his pay, thereafter in stages one increment will be allowed for two stages bunched together. One condition attached to the bunching increment would be that the increment shall be calculated only on the pay in pay band by excluding the grade pay. In the instant case the petitioner's revised pay does not fall below the minimum of the revised scale of pay of Rs.9300 and hence the question of invoking the bunching effect does not arise.

10. At this stage the learned counsel for the petitioner submitted that the basis for the application of bunching effect is for the stages and it does not have any relevance to the minimum scale. Such an understanding is falsified in view of the explicit rules prescribed under Rule 4(ii) Tamil Nadu Revised Scales of Pay Rules, 2009. Rule 4(1) (ii) speaks only about minimum of pay scale / pay band and it has got no relevance to the stage of pay. The stage has relevance only in accordance with Rule 4(iii) and that too only in cases for which Rule 4(i) (which speaks about about minimum of pay scale / pay band) is applicable.

11. As the petitioner is a selection grade Assistant Jailer, he also gets the benefit of Government Letter issued in Letter No.63305/Pay Cell/2010-1 Finance (PC) Department dated 08.11.2010. This Government Letter has been issued in accordance with the recommendation of One Man Commission, 2010, for fixing of the pay of the employees in the selection grade / special grade on the representation made by certain employee's Associations and the Heads of the Department. After examining the representation, the Government was pleased to issue the following clarification and improvement:

" ***Paragraph No.4 of Letter No.63305/Pay Cell/2010-1 Finance (PC) Department dated 08.11.2010:***

" 4) The above issue has been examined by Government in detail in the light of the orders issued in para-4 of Government Order second cited and the consequential revision made to the various categories in the Ordinary Grade scales of pay based on the One Man Commission recommendations and subsequent Government Orders. Accordingly, I am directed to issue the following guidelines for fixation of pay in the revised Selection Grade /Special Grade posts:

(i) The revised Selection Grade / Special Grade scales of pay in the case of employees awarded Selection Grade / Special Grade prior to 1-1-2006 and in whose cases the Ordinary Grade scales of pay have been revised based on the recommendations of One Man Commission/further order of Government thereon shall be fixed as per the scales of pay indicated in the Annexure I to this letter following the same methodology of fixation of pay in the Selection Grade / Special Grade scales of pay of employees as was done in pre—2006 scales of pay as indicated in Appendix-II of G.O.Ms.No.162, Finance (PC) Department, dated: 13-4-98 subject to the same condition stipulated therein that if the revised Selection Grade /Special Grade scales of pay indicated in the Annexure-I happens to be higher than the first level/second level promotion posts, then in such cases only the revised Selection Grade / Special Grade scales of pay should be restricted to the level of their first level and second level promotional posts respectively.

(ii) The above revised Selection Grade / Special Grade scales of pay indicated in the Annexure -I to this letter shall be confined only to the employees who were awarded Selection Grade / Special Grade prior to 1-1-2006 and in the case of employees who have exercised their option to come over to the revised scales of pay on the date of

their award of Selection Grade/Special Grade between 1-1-2006 and 31-5-2009, (prior to the issue of G.O. Ms. No. 234, Finance (Pay Cell) Department, dated: 1-6-2009.)

(iii) The revised Selection Grade / Special Grade scales of pay indicated in Annexure -I to this letter is admissible only in cases where the scales of pay of the Ordinary Grade posts were revised based on the recommendations of the One Man Commission and subsequent Government Orders.

(iv) The above revised Selection Grade / Special Grade scales of pay is not applicable to the employees moving to Selection Grade / Special Grade posts on or after 1-6-2009 since these employees are awarded Selection Grade Special Grade directly in the revised scales of pay and therefore entitled for one increment benefit equal to 3% of basic pay plus grade pay on the date of award of Selection Grade / Special Grade as ordered in para-4 of G.O.Ms.No.234, Finance (PC) Department, dated: 1-6-2009."

12. By invoking 4(i) of the above Government Letter the petitioner was given advantage and thereby his grade pay has been increased from Rs.4200 to 4400. Accordingly, the petitioner's revised pay scale has been fixed as on 01.01.2006 as Rs.10,850/- being the basic pay + Rs.4,400 being the grade pay making it together a total of Rs.15,250/-. If periodical annual increment is added at the rate of Rs.4,600/- (representing 3% of basic pay + G.P.), the petitioners pay would be fixed as under:

Pre-Revised scale		***Pay drawn as on 31.12.2005***	***Revised Scale of Pay as on 01.01.2006***
Rs.5000-150-8000		Rs.5600 + Personal Pay 230	Rs.9300 – 34800 + Grade Pay Rs.4200
Sl.No.	***Date***	***Revised Scale of Pay***	***Pay fixed as***
1	01.01.2006	Rs.9300-34800 + Grade Pay Rs.4200 (The pay has to be fixed as on 01.01.2006 as per Tamil Nadu Revised Scale of Pay Rules,2009)	Rs.10850+4200=15050
2	01.01.2006	Rs.9300-34800 + Grade Pay Rs.4400 (The Pay has to be fixed as on 01.01.2006 by awarding Selection Grade Scale of pay as per Government Letter No.66305, Finance (Pay Cell) Department, dated 08.11.2010)	Rs.10850 + 4400 =15250
3	01.07.2006	Periodical Increment Rs.460/-	Rs.15710/-
4	01.07.2007	Periodical Increment Rs.480/-	Rs.16190/-
5	01.07.2008	Periodical Increment Rs.490/-	Rs.16680/-
6	01.07.2009	Periodical Increment Rs.500/-	Rs.17180/-
7	30.06.2010	Rs.520/- to grant one increment on superannuation on the preceding day of increment date	Rs.17700/-

13. So the petitioner's pay that can be fixed at the time of his retirement can be Rs.17,700/- which is inclusive of one more increment allowed to him as on 01.07.2010, which is the next day of of his date of superannuation i.e. 30.06.2010.

14. As the petitioner's last pay drawn scale can be fixed by allowing one more increment as on 01.07.2010, the petitioner's scale shall be fixed at Rs.17,700/- w.e.f. 01.07.2010 and not as arrived in the order of the first respondent dated 20.02.2019.

15. If a higher pay has been fixed as last drawn pay by mistake and the petitioner was given in the higher pension till the revision as above, there shall not be any order for recovering the same. This is in view of the guidelines issued by the Hon'ble Supreme Court in ***State Of Punjab & Ors. vs. Rafiq Masih (White Washer)*** reported in ***2015 4 SCC 334*** with regard to impermissible recovery.

16. Accordingly, the writ petition is partly allowed only to the limited extent of directing the first respondent to fix the last drawn pay scale of the petitioner at Rs.17,700/- and pass further orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

24.04.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
bkn

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   (Accounts and Entitlements),
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R.N.MANJULA, J.

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