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W.P.No.37685 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.No.37685 of 2024

B.Kalaiselvi

... Petitioner

-Vs-

1.The Registrar General
High Court of Judicature at Madras
High Court Buildings, Chennai-600 104.

2.The Principal District Judge
Vellore-632 009.

3.The Principal Accountant General
(Accounts and Entitlement), No.361
Anna Salai, Teynampet, Chennai.

... Respondents

PRAYER : Petition under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the 2nd respondent vide order in Dis No.20/2019 dated Nil.12.2019 signed on 31.12.2019 and served on 2.1.2020 and all consequential proceedings taken in pursuance of the impugned order passed by the 2nd respondent and quash the same and consequently direct the respondent to refund of Rs.3,32,823(Rupees Three Lakhs Thirty-Two thousand and eight hundred and twenty three) recovered from petitioners DCRG along with interest within time frame fixed by this Court, thereby revise and refix the scale of the petitioner by restoring her old scale of pay.



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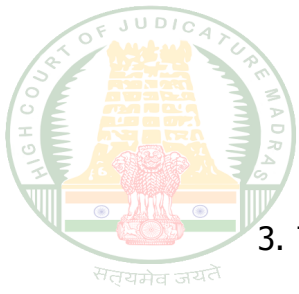
For Petitioner : Mr.S.N.Ravichandran
For Respondents : Mr.S.Arjun Suresh – for RR 1 and 2
Mr.V.Vijay Shankar – for R3

ORDER

(Order of the Court was made by **R.SURESH KUMAR, J.**)

The writ petitioner was promoted as Junior Assistant (Ordinary Grade) with effect from 12.12.1988, where her grade pay was fixed at Rs.2,200/-. Subsequently, she earned selection grade in the year 1998 and special grade in 2008. When she got selection grade and special grade, since she was entitled to get higher grade pay, which is Rs.2400/- and Rs.2800/- respectively, that pay has been initially fixed on her and she was drawing the same.

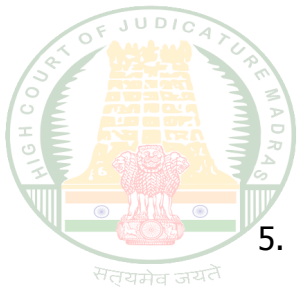
2. However, the petitioner has sent a request on 11.01.2013 stating that since from 01.01.2006, based on the VI pay commission recommendation if the pay is refixed, her grade pay should have been fixed at Rs.4,200/- for selection grade and special grade with effect from 01.01.2000 notionally and from 01.02.2011 monetarily. That request made by the petitioner having been considered, the pay has been revised and a proceedings dated 13.04.2013 was issued. Accordingly, the petitioner was receiving the arrears of the difference in pay from 01.02.2011 and was continuing to receive the higher pay to the extent of Rs.4,200/- as grade pay with effect from 01.02.2011 monetarily.



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3. This position has been found out during audit and an audit objection was raised and therefore, it became necessitated for the respondents to revisit the pay fixed on the writ petitioner, thereby her wrong fixation has been rectified to the effect that her pay shall be on the basis of the VI Pay Commission from 01.01.2006 notionally and from 01.02.2011 monetarily ie., Rs.2,400/- initially and Rs.2,800/- subsequently by way of selection grade and special grade benefits. Therefore, the excess payment that has been made by calculating the grade pay at Rs.4,200/- from 01.02.2011 already been paid to the writ petitioner having been found out, was sought to be recovered, which the respondents quantified to the extent of Rs.3,32,823/-. Therefore, in order to recover the said amount and after having refixed the pay at the rate for which she was entitled to as grade pay both on selection grade and special grade, order has been passed by the second respondent through her proceedings dated 31.12.2019, which was immediately implemented and recovery was sought to be made from her death-cum-retirement benefits, as the writ petitioner retired from service with effect from 31.03.2020. Challenging the said order dated 31.12.2019, refixing her pay as well as recovery of Rs.3,32,823/-, the present writ petition has been filed.

4. Heard Mr.S.N.Ravichandran, learned counsel for the petitioner, Mr.Arjun Suresh for respondents 1 and 2 and Mr.Vijay Shankar for the third respondent.



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5. It is to be noted that when she was promoted as Junior Assistant with effect from 12.12.1988, she was in the ordinary grade, where her pay was Rs.5200-20200 + Grade pay Rs.2200/-. If the same has been revised on selection grade, it must be revised only to Rs.2,400/- and special grade to Rs.2,800/-. Instead of such a revision, even though that has already been made only because of the request made by the petitioner dated 11.01.2013, such an order has been passed on 13.04.2013, giving such a revised fixation of pay for the selection grade and special grade monetarily with effect from 01.02.2011.

6. Such a fixation is a wrong fixation as it is not in consonance with the relevant Government Orders which are in vogue. When that being the position, the wrong fixation since has been found out by the audit objection, the employer had no other option except to revise the same and to proceed with the recovery of the excess amount paid to the writ petitioner by the respondents by passing the impugned order and such a recovery has also been effected from the death-cum-retirement benefits of the writ petitioner.

7. In this context, we do not find any error in the passing of the impugned order insofar as the re-fixation of the salary of the writ petitioner is concerned, as the writ petitioner was entitled to get selection grade and special grade only at the rate of either Rs.2,400/- and Rs.2,800/- respectively and at no stretch of imagination she would be entitled to a grade pay of Rs.4,200/-. It is a wrong fixation that has been



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made with effect from 01.02.2011. Therefore, based on such a wrong fixation, if any excess amount is paid, that might be recovered. But at the same time, insofar as the case of the petitioner is concerned, since she already retired from service with effect from 31.03.2020 and in view of the order that has already been passed by the Hon'ble Supreme Court in **"State of Punjab v. Rafiq Masih (White Washer) (2014) 8 S.C.C.833** , such a recovery would become unlawful. Therefore, insofar as the recovery that is sought to be made by the impugned order, we are inclined to interfere with the same.

8. In result, the writ petition is partly allowed and the following orders are passed:

- (a) That the impugned order dated 31.12.2019 insofar as refixing of the pay of the writ petitioner is concerned, it has to be sustained. Accordingly, it is sustained.
- (b) However, insofar as the recovery of Rs.3,32,823/- is concerned, such a recovery since could not be possible in view of the aforesaid position, we are inclined to set aside the same, as a result of which, if the recovery has already been made from the death-cum-retirement benefits, the same shall be refunded to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.



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**R.SURESH KUMAR, J.
and
C.SARAVANAN, J.**

KST

9. With the above directions, the writ petition is partly allowed on the above terms. No costs.

**(R.S.K., J.) (C.S.N., J.)
27.01.2025**

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

KST

To

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