

WP(MD). No.26535 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 21.04.2025

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

WP(MD). No.26535 of 2023
and
W.M.P.(MD)No.22813 of 2023

Mariappan .N

... Petitioner

Vs

1. The Branch Officer,
Office of the Accountant General (A and E),
No.361, Anna Salai,
Chennai - 600 018..

2. The District Munsif Cum Judicial Magistrate,
Thiruppuvanam,
Sivagangai District..

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in No. AG(A and E)/PEN P02/10227518/1/R0227518, dated 02.01.2023, quash the same insofar as 5 percent P.P. is concerned and consequently direct the 1st respondent to provide the retirement benefits and monthly pension to the petitioner without deducting the 5 percent P.P.



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WP(MD). No.26535 of 2023

For Petitioner : Mr.RV.Rajkumar

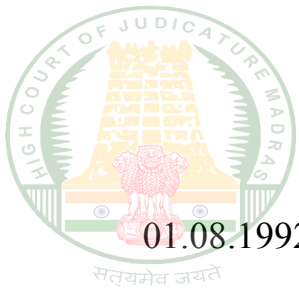
For Respondents : Mr.P.Gunasekaran for R1
Mr.D.Sivaraman for R2

ORDER

(Order of the Court was made by S.SRIMATHY, J.)

The writ petition has been filed challenging the impugned order dated 02.01.2023 passed by 1st respondent in No.AG(AandE)/PEN/P02/10227518/1/R0227518 and to direct the first respondent to provide the retirement benefits and monthly pension to the petitioner without deducting the 5% Personal Pay.

2. The case of the petitioner is that he joined duty as Office Assistant on 01.06.1993 in the District Court, Sivagangai and subsequently promoted as Process Server/Junior Bailiff on 01.11.1994, Senior Bailiff/Bailiff on 04.09.2000 and voluntarily retired on 30.11.2022. The pay scale of Senior Bailiff was refixed on par with the Junior Assistant vide order of this Court in W.P.No.6641 of 1991 and W.P.No.1187 of 1992 in the 5th pay commission. Subsequently vide G.O.Ms.No.664 dated 24.08.1993, the Government decided to grant 5% of personal pay to all the categories mentioned in the said G.O. with effect from



WP(MD). No.26535 of 2023

01.08.1992. However, the Government through its proceedings held that the Senior Bailiffs, though they are entitled to the personal pay, but they will not come under the purview of G.O.Ms.No. 664 since as per G.O.Ms.No.497 dated 15.09.1998 only those who had received 5% personal pay prior to 01.01.1998 are alone entitled to get 5% personal pay, i.e., those who are promoted as Bailiffs after 01.09.1998 are not entitled and accordingly, recovery order was issued vide letter dated 08.09.1999. The said order was challenged before this Court in W.P. (MD)No.8818/2008 and this Court vide its order dated 13.10.2009 held that the Bailiffs come under the categories mentioned in G.O.Ms.No.664 and they are entitled to 5% personal pay and the said order was also implemented through letter dated 10.09.2010, however, the benefits were denied to those who got promoted to the higher posts. Accordingly, the petitioner was also granted with 5% of personal pay.

3. While so, since the audit wing of the Judicial Department objected for grant of 5% personal pay to the bailiffs, recovery order and refixation orders were issued to those who are promoted after 01.04.1994 and 28.09.1998. The petitioner was also issued with such an order on the ground that he was promoted as bailiff on 04.09.2000. Challenging the said order, the petitioner along with



WP(MD). No.26535 of 2023

others filed writ petitions and those writ petitions were allowed by this Court on 23.01.2017. Accordingly, the petitioner was paid with 5% of personal pay and he retired on 30.11.2022. The Service Register of the petitioner was sent to the office of the first respondent for grant of pension and other benefits. While so, through proceedings dated 02.01.2023, the pension and other benefits were disbursed, however, deducting the amount towards 5% of personal pay. The reason assigned was that since the petitioner was promoted as Senior Bailiff on 04.09.2000, i.e., after 01.09.1998, he was not entitled to 5% of personal pay. This Court had set aside the orders of the Government and the first respondent, and allowed the writ petitions filed by the petitioner and others, hence the deduction made is illegal. It is the case of the petitioner that for similarly placed employees, such deduction was not made. As far as the petitioner alone, the said deduction was made contrary to the decision of this Court. The impugned proceedings dated 02.01.2023 was passed, hence, the petitioner submitted a representation on 16.06.2023 along with the pension disbursal order to the first respondent. The first respondent reiterated once again that the earlier proceedings dated 02.01.2023 was correct. Hence, challenging the impugned proceedings, the petitioner is before this Court.



WP(MD). No.26535 of 2023

4. Per contra, the 2nd respondent has filed a counter affidavit stating that on and from the date of joining of the petitioner as bailiff, i.e., from 04.09.2000, the pay of the petitioner was fixed with 5% of personal pay. Subsequently after the retirement of the petitioner, on 30.11.2022, the petitioner's representation dated 16.06.2023 seeking for implementation of 5% of personal pay as per the order of this Court dated 23.01.2017 in W.P.(MD)No.18707 of 2016 was sent to the first respondent. However, through proceedings dated 02.08.2023, the request of the petitioner was rejected by the first respondent stating that as per G.O.Ms.No.664 and Government Letter No.34283/CMPC/2010 dated 10.09.2010, 5% personal pay is admissible only to those who are holding the time scale of pay on the crucial date, i.e., 01.09.1998 and not later date. It is therefore the contention of the 2nd respondent that the 2nd respondent has no power or authority to decide the issue and the Principal District Judge is only the appointing authority to refix the special grade and selection grade.

5. We have heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and perused the materials available on record.

6. The entitlement of 5% personal pay was already considered in the



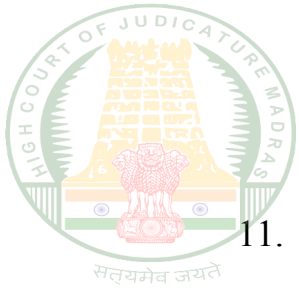
WP(MD). No.26535 of 2023

petitioner's case itself in W.P.(MD)No.18707 of 2016, wherein the Division Bench vide order dated 23.01.2017 had held that the petitioner is entitled to the benefits of G.O.Ms.No.664.

7. The similarly placed persons had filed writ petitions in W.P.(MD)No. 8818 of 2008, W.P.No.14350 of 2012, W.P.(MD)No.7387 of 2011, W.P.(MD)No. 5480 of 2011, W.P.(MD)No.13567 of 2013, W.P.(MD)No.13665 of 2013, W.P. (MD)No.22447 of 2018, W.P.(MD) No. 19880 of 2018 wherein also the issue was considered and it has been held that the Senior Bailiff is entitled to the benefits of G.O.Ms.No.664.

9. Following the judgements cited supra this Court is of the considered opinion that the petitioner is entitled to the benefits of G.O.Ms.No.664. Therefore, the impugned order is quashed and the respondents are directed to grant the benefits of 5% PP to the petitioner as per G.O.Ms.No.664.

10. As far as the claim of special grade, the impugned order is legally valid and the same is hereby confirmed.



WP(MD). No.26535 of 2023

11. In the result, the writ petition is allowed as stated supra. No costs.

Consequently, connected Miscellaneous Petition is closed.

[J.N.B.,J]

[S.S.Y.,J]

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NCC : Yes/No

Index : Yes/No

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