



W.P.No.31156 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02 / 04 / 2026

Coram:

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS. JUSTICE K.GOVINDARAJAN
THILAKAVADI**

**W.P.No.31156 of 2023 &
W.M.P.Nos.30784 and 30785 of 2023**

- 1.Union of India,
Rep. by the Chief Controller of Explosives,
Petroleum and Explosives Safety Organization,
Nagpur - 440 006.
- 2.The Joint Chief Controller of Explosives,
South Circle, Petroleum and Explosives Safety Organization,
Chennai - 600 006.
- 3.The Senior Accounts Officer (I AW),
O/o.Chief Controller of Accounts,
115, Ministry of Industry (Internal Audit Wing),
Room No.517-E, Udyog Bhawan,
New Delhi 110 001.

... Petitioner

Vs.

- 1.The Registrar,
Central Administrative Tribunal,
Madras Bench High Court Building,
Chennai - 104.

2.K.S.Rekha

... Respondents

1/11



W.P.No.31156 of 2023

Prayer: This Writ Petition is filed under Article 226 of Constitution of India, for issuance of Writ of Certiorari to call for the records of the Tribunal in its impugned order dated 24.04.2023 in O.A.No.572 of 2022 passed by the first respondent, Central Administrative Tribunal, Madurai Bench and quash the same.

For Petitioner : Mr.M.Karthikeyan

For Respondents : R1 (Tribunal)
Mr.R.Malaichamy for R2

ORDER

P.VELMURUGAN, J.

The present Writ Petition has been filed seeking issuance of Writ of Certiorari, to call for the records relating to the order passed by the Central Administrative Tribunal, Madras Bench, in O.A.No.572 of 2022 dated 24.03.2023 and to quash the same.

2. The second respondent herein was initially appointed as Stenographer Grade-D in the Office of the Chief Engineer, CPWD, New Delhi, through Staff Selection Commission. Subsequently, on her own

2/11



W.P.No.31156 of 2023

request and on compassionate grounds, she sought inter-departmental transfer to Tamil Nadu in a lower post, namely Lower Division Clerk (LDC), in the office of the petitioners. The said request was accepted by the petitioners and she was appointed as LDC by order dated 16.06.2000, subject to certain conditions, specifically that the appointment was out of the cadre of CSSS (Central Secretariat Stenographer Service), that no transfer benefits would be admissible, and that the service rendered earlier would not count for seniority and the appointment would be treated as direct recruitment.

3. Pursuant thereto, the second respondent tendered technical resignation from her parent department and joined duty as LDC on 10.07.2000. At the time of joining, her pay was fixed by granting pay protection.

4. While so, during audit, objection was raised by the Internal Audit Wing stating that since the appointment of the second respondent in the petitioner department was on her own request and treated as direct



W.P.No.31156 of 2023

recruitment, the pay ought to have been fixed at the minimum of the scale applicable to LDC and not by granting pay protection. Based on such audit objection, the petitioners revised the pay fixation and issued consequential proceedings.

5. Aggrieved by the same, the second respondent approached the Central Administrative Tribunal by filing O.A.No.572 of 2022 challenging the revised pay fixation and seeking restoration of pay protection and consequential service benefits.

6. The Tribunal, upon considering the materials placed before it, allowed the Original Application by order dated 24.03.2023 and set aside the impugned proceedings. The Tribunal directed the petitioners to restore the original pay fixation by protecting the pay of the second respondent, grant consequential promotion benefits and refund the amount, if any, recovered.

7. Aggrieved by the said order of the Tribunal, the petitioners have filed the present Writ Petition.



W.P.No.31156 of 2023

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8. The learned counsel appearing for the petitioners would submit that the Tribunal failed to appreciate that the second respondent had sought appointment to a lower post on her own request and had accepted the conditions of appointment, including the condition that it would be treated as direct recruitment. Therefore, she cannot subsequently claim pay protection as a matter of right. The learned counsel further submitted that the original pay fixation was erroneous and contrary to the applicable rules, which was rightly pointed out by the audit authorities. It is contended that the Government is always entitled to rectify an error in pay fixation and the Tribunal erred in interfering with such corrective action. It is further contended that the Tribunal failed to appreciate that ex-post facto approval obtained from the Department of Personnel and Training related only to transfer and not to pay protection, and therefore the same cannot be relied upon for sustaining the claim of the second respondent.

9. Per contra, the learned counsel appearing for the second respondent would submit that the second respondent had joined the petitioner department after tendering technical resignation and therefore her past



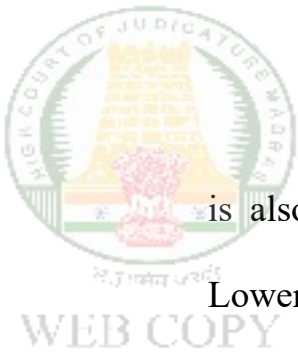
W.P.No.31156 of 2023

service could not be ignored for the purpose of pay protection. It is further submitted that the pay protection was granted at the time of initial appointment and continued for more than a decade, and the same could not be disturbed belatedly based on audit objection. The learned counsel for the second respondent would further submit that the Tribunal rightly considered the factual and legal aspects and granted relief, and there is no infirmity warranting interference and hence, prays for dismissal of the writ petition.

10. Heard the learned counsel on either side and perused the materials available on record.

11. The issue that arises for consideration is whether the Tribunal was justified in restoring the pay protection granted to the second respondent and in setting aside the revised pay fixation made pursuant to the audit objection.

12. It is not in dispute that the second respondent was appointed in the petitioner department on her own request by way of inter-departmental transfer, after tendering technical resignation from her parent department. It



W.P.No.31156 of 2023

is also not in dispute that the appointment was to a lower post, namely Lower Division Clerk, and that the appointment order specifically stipulated that it would be treated as direct recruitment and that no transfer benefits would be admissible.

13. In such circumstances, this Court is of the view that the initial grant of pay protection at the time of appointment was not in accordance with the applicable rules. Where an employee seeks appointment to a lower post on her own request and accepts appointment as a direct recruit, she cannot, as a matter of right, claim protection of the pay drawn in the previous post. Ordinarily, in such cases, the pay has to be fixed at the minimum of the scale applicable to the post.

14. However, it is seen that pay protection was granted at the time of initial appointment and the same continued for a considerable period without objection. The second respondent had drawn salary on that basis for several years, and there is nothing on record to show that such benefit was obtained by any misrepresentation or fraud.



W.P.No.31156 of 2023

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15. The revision of pay fixation has been made subsequently based on an audit objection. While it is open to the authorities to correct an erroneous pay fixation in accordance with the applicable rules, such correction, in the facts of the present case, cannot be given retrospective effect so as to result in recovery of amounts already paid.

16. This Court is of the considered view that recovery of excess payments made over a prolonged period, in the absence of any misrepresentation or fraud on the part of the employee, would be unfair and cannot be sustained in law.

17. Therefore, while the petitioners are justified in revising the pay fixation prospectively in accordance with the applicable rules, the excess payments already made pursuant to the earlier fixation shall not be recovered.



W.P.No.31156 of 2023

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18. In view of the above, the order of the Tribunal granting full pay protection is set aside. However, the direction restraining recovery of the alleged excess payment is upheld. It is further made clear that the re-fixation of pay shall operate only prospectively from the date of issuance of the proceedings revising the pay fixation, and no recovery shall be made in respect of the excess payments already disbursed. The writ petition is disposed of in the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

[P.V.J.] [K.G.T.J.]
02 / 04 / 2026

Speaking Order
Neutral Citation case: Yes

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W.P.No.31156 of 2023

To

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