

W.P.NO.25154 OF 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2025

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.NO.25154 OF 2024

K.Jothimani
W/o.Kannan
No.5, Sunder Nagar,
Bharathi Nagar, Old Perukalathur,
Chennai – 63.

... Petitioner

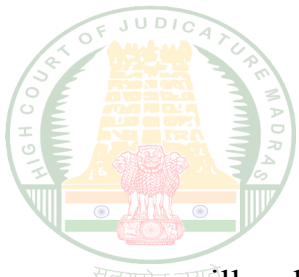
Vs.

1.The Director
Tamil Nadu Motor Vehicle Maintenance Dept.,
Government Central Automobile Workshop
Compound,
Velacherry, Chennai – 42.

2.The Assistant Account Officer
Tamil Nadu Motor Vehicle Maintenance Dept.,
Government Central Automobile Workshop
Compound,
Velacherry, Chennai – 42.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of recovery and refixed the salary of the petitioner in amended Se.Mu.Aa.No.U4/5602/2024 dated 21.05.2024 on the file of the first respondent and quash the same as



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illegal and consequently direct the first respondent to refund the recovery amount which was made from the petitioner's salary account from May 2024 till date.

For Petitioner : Mr.M.Kaniveerappan
For Respondents : Mr.M.Shahjahan
Special Government Pleader

ORDER

This Writ Petition has been filed in the nature of a Certiorarified Mandamus, seeking records relating to the order of recovery dated 21.05.2024, by which the salary of the petitioner was refixed. This order was passed by the first respondent. The petitioner seeks that the said order be quashed by this Court. The petitioner also seeks that the amount recovered be refunded.

2.In the affidavit filed in support of the writ petition, it has been stated that the petitioner, who is set to retire on attaining the age of superannuation on 31.05.2025 is currently employed as Selection Grade Superintendent in the respondent Department. He was initially appointed as Junior Assistant on 24.02.1995. Subsequently, his post was upgraded to Upgrade Assistant on 03.01.2002, then further upgraded to Assistant

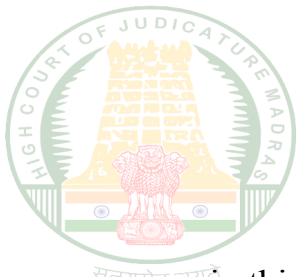


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on 02.05.2003, later to Selection Grade Assistant on 21.09.2011, and finally to Selection Grade Superintendent on 30.11.2011.

3.It is contended that based on a representation that the petitioner's salary differed from that of another employee, the petitioner's salary was revisited and refixed, leading to the impugned order directing recovery of salary. It was contended that the promotion of the petitioner from Junior Assistant to Upgrade Assistant on 03.01.2002 was erroneous, and as a result, the petitioner was deemed liable to repay the excess amount received. However, this is an exercise that should have been undertaken at the earliest possible time. The Service Register is available with the respondents and must be counter-signed and verified by higher authorities annually. It should be ensured whether the petitioner's salary was properly fixed, whether he was overdrawing salary and whether necessary increments and allowances were paid. This duty is not limited to the petitioner alone but extends to every employee. The responsibility lies with the Pay Disbursing Authority to verify the Service Register. If negligence occurred on their part, the employee cannot be subjected to undue hardship by an order of recovery issued after more than 10 years,



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in this case, nearly 15 years.
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4.The learned counsel for the petitioner placed strong reliance on the Judgment of the Hon'ble Supreme Court in *State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others* reported in *(2015) 4 SCC 334*. The learned counsel specifically relied on the directions issued in paragraph No.18, which are as follows:

“18. It is not possible to postulate all situations of hardship that would govern employees on the issue of recovery where payments have mistakenly been made by the employer in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations wherein recoveries by the employers would be impermissible in law:

(i) *Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

(ii) *Recovery from retired employees, or employees who are due to retire within one year of the order of recovery.*

(iii) *Recovery from employees when the excess payment has been made for a period exceeding five years*



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before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case where the Court concludes that recovery, if made, would be iniquitous, harsh, or arbitrary to such an extent that it would far outweigh the equitable balance of the employer's right to recover.”

5.It is also evident that the impugned order was issued without a prior show-cause notice, seeking an explanation from the petitioner. Therefore, the impugned order is set aside.

6.Additionally, apart from the judgment of the Hon’ble Supreme Court, the Government has also passed G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018, wherein directions in conformity with the Supreme Court’s judgment have been issued in paragraph No.7, as follows:

“7. The Government also directs that the procedure for the recovery of overpaid amounts shall be as follows:



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(1) Whenever any overpayments are noticed, action for fixing responsibility on the erring officials shall be initiated by the Secretary to Government, Administrative Department in Secretariat / Head of Departments / Heads of Offices concerned immediately.

(2) Endeavour should be made to recover the overpaid amount from the recipient.

(3) In cases where the reasons for overpayment are attributable to the employee / pensioner / family pensioner or the establishment concerned, legal action / other follow-up actions shall be initiated against such member or establishment for recovery of the overpaid amount.

(4) The recovery of overpayments from officials shall be made only when responsibility for such overpayments has been fixed by the Secretary to Government, Administrative Department in Secretariat / Head of Departments / Heads of Offices on the concerned officials. In these cases as well, efforts should be made to recover the amounts from the recipients to the extent possible and permissible under law.”

7. Since the legal position is clear and unambiguous, and the ratio laid down by the Hon'ble Supreme Court has been confirmed by the Government Order, which binds all public servants, the impugned order is necessarily set aside. The salary recovered from the petitioner from May 2024 is directed to be refunded. Necessary orders in this regard shall



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be passed on or before 31.05.2025, the date of the petitioner's superannuation.

8.The writ petition stands allowed. No costs.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
TK

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C.V.KARTHIKEYAN, J.



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