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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-07-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

WP No. 38146 of 2025

N.Loganathan

..Petitioner(s)

Vs

1. The Regional General
High Court Of Judicature At Madras,
Chennai- 600 104.
2. The Principal Accountant General (a And E)
Of Tamil Nadu
O/o.The Accountant General, Teynampet,
Chennai- 600 018.
3. The Principal District Judge
Erode District Court, Erode.
4. The Subordinate Judge
Perundurai, Erode District- 638 452.
5. The Subordinate Judge
Gobichettipalayam, Erode District.

..Respondent(s)

To call for the records of the Impugned recovery order dated 08.08.2024 passed by the 5th Respondent and quash the same as it is against the principles of natural Justice.

For Petitioner(s):

Mr.K.Vasanthanayagan

For Respondent(s):

Mr.M.Kempuraj For R1, R3 To R5
No appearance for R2

**ORDER****(Order of the Court was made by S.M.Subramaniam J.)**

Writ on hand has been instituted to set aside the impugned proceeding dated 08.08.2024 passed by 5th respondent, which is a show cause notice for recovery of excess pay and allowance of Rs.4,01,645/- from petitioner and to pass such suitable orders.

2. The petitioner joined as Junior Assistant on 01.02.2007 and has been promoted to various levels and is presently working as Sheristadar. On 08.08.2024, the 5th respondent issued a show cause notice, stating that pursuant to the findings of internal audit wing of the High Court, the sanction of Justice Shetty Commission increment in the post of Junior Assistant and the sanction of one promotional increment on transfer from the post of Assistant to Bench Clerk Grade III were held inadmissible. Hence, the excess payment of Rs.4,01,645/- was sought to be recovered from the salary of the writ petitioner, for which the petitioner was granted time to submit his explanation.

3. Normally no Writ would lie against the show cause notice and the noticee on receipt is expected to submit their explanation in response to the notice defending his/her case. However, a writ would lie where the competent authority has issued the notice without jurisdiction.



4. The learned counsel for the petitioner would submit that an order of recovery was passed insisting the petitioner to file the writ petition.

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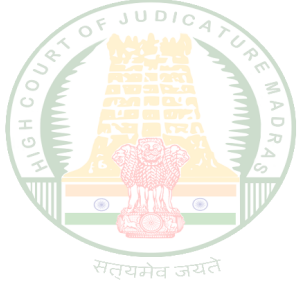
5. Unjust gain of public money is impermissible under law. In such circumstances, the Authorities Competent are empowered to rectify the errors in fixation of pay and grant the correct pay as applicable, in accordance with the Pay Rules and Government Orders.

6. Unless, the respondents are unable to establish that there was a misrepresentation on the part of the employee during fixation of pay, it is an error committed by the Establishment for which the petitioner cannot be penalised after a lapse of many years. Recovery of excess salary at this length of time would result in extreme hardship to the employee.

7. In this regard, the Hon'ble Supreme Court of India also enumerated the legal principles in the case of **State of Punjab v. Rafiq Masih**¹ and held as hereunder:

“18.It is not possible to postulate all situations of hardship which 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

¹2015 4 SCC 334



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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 the employees belonging to Class III and Class IV service (or Group C and Group D service).

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

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, 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 arrives at the conclusion, that recovery if made from the employee, would iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.



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8. This Court is of the view that if any recovery order is passed pursuant to the re-fixation of pay, such recovery alone is liable to be set aside. If no recovery is made, the recovery shall not be made for the excess payment. However, the re-fixation of pay shall be carried out strictly in accordance with the applicable Pay Rules and the Government Orders in force.

9. Accordingly, the writ petition stands disposed of. If any recovery has been made pursuant to the audit objection and show cause notice, the said amount is directed to be refunded to the petitioner, within a period of twelve (12) weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition, if any is closed.

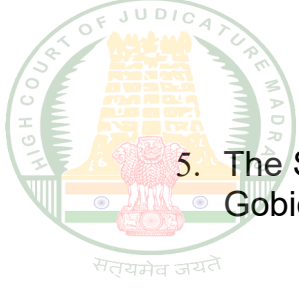
(S.M.S.,J.) (N.S.,J.)
09-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

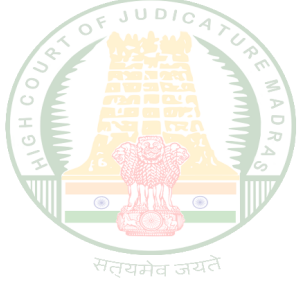
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**S.M.SUBRAMANIAM, J.
AND
N.SENTHILKUMAR, J.**

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