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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	30/04/2026
Date of Pronounced	28/07/2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

W.P(MD) No.5550 of 2022
and
WMP(MD)No.4493 of 2022

S.Krishnamoorthy : Petitioner

Vs.

The Principal District and Sessions Judge,
Srivilliputhur,
Virudhunagar District. : Respondent

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Ceriorari, calling for the records pertaining to the impugned order passed by the respondent, dated 07/12/2021 and quash the same, and pass such further or other orders.

For Petitioner : Mr.R.V.Rajkumar

For Respondent : Mr.G.Thalaimutharasu

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ORDER

R.POORNIMA,J:-

This Writ Petition has been filed to quash the impugned order passed by the respondent, dated 07/12/2021.

2.The case of the petitioner is that he joined service as Office Assistant on **17/12/2007** and promoted as Junior Bailiff on 04/10/2011. Thereafter, he was promoted as Senior Bailiff on 21/09/2015 and is presently serving in the same capacity under the respondent.

2.1.It is the further case of the petitioner that the First National Judicial Pay Commission (Justice Shetty Commission), with a view to reform the subordinate judiciary and improve the service conditions and pay structure of judicial employees, recommended certain structural alterations and pay revisions for various categories, including Junior Bailiff, Sheristadar in Sub Courts, Bench Clerks Grade-I & II, etc. To remove anomalies, the Commission also recommended the grant of one advance increment to certain common categories in the Ministerial Cadre

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of the Tamil Nadu Judicial Ministerial Service, including Junior Assistant/Typist, Examiner, Reader, Senior Bailiff, Copyist, Assistant, Sheristadar and Head Clerk in various Courts including Judicial Magistrate Courts and Sub Courts.

2.2.The recommendations relating to structural alterations and higher pay revision were implemented through G.O.Ms.Nos.40, 672 and 761, Home (Courts-V) Department, dated 10/07/2008, 27/07/2010 and 11/01/2008 respectively with effect from 01/04/2003. Insofar as the recommendation relating to the grant of one advance increment is concerned, the same was implemented through G.O.Ms.Nos.1011, 351 and 450, Home (Courts-V) Department, dated 07/12/2010, 30/06/2011 and 11/08/2011 respectively with effect from 01/04/2003.

2.3.According to the petitioner, the posts of Sheristadar, Assistant, Junior Assistant and Senior Bailiff in the City Court/District Court are covered under G.O.Ms.No.1011, dated 07/12/2010, whereas the posts of Examiner, Reader, Typist, Copyist and Head Clerk in various Courts, including Judicial Magistrate Courts and Sub Courts, are covered

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under G.O.Ms.No.450, dated 11/08/2011. Accordingly, he was granted the benefit of one advance increment in the post of Office Assistant.

2.4.However, the respondent issued the impugned order, dated **07/12/2021** directing recovery of the advance increment already granted to the petitioner on the ground that the recommendation was applicable only to those appointed/promoted to the relevant categories between 01/04/2003 and 31/12/2005 and not to those appointed/promoted thereafter. Since the petitioner was appointed as a Office Assistant **after 31/12/2005**, it was held that he was not entitled to the advance increment and the pay should be re-fixed and the excess pay and allowance should be recovered.

2.5.The petitioner contended that the relevant Government Orders referred above do not impose any such condition. According to him, the respondent passed the impugned order merely based on the audit objection. Though a notice dated **16/04/2021** was issued, there was no proper or meaningful consideration of his explanation. Therefore, the impugned order is arbitrary, unreasonable and irrational, and has no

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nexus with the object sought to be achieved by the recommendations of the Justice Shetty Commission.

2.6.The petitioner further stated that the respondent had granted the very same benefit to similarly placed employees, namely Ravindran, Paramasivam and Tamil Selvi, and their pensionary benefits had also been settled accordingly by the office of the Accountant General. A similar recovery order passed against one Kandasamy was challenged in W.P.(MD)No.11083 of 2021, in which an interim stay of recovery was granted.

2.7.The petitioner further stated that he has now been directed to remit the excess pay and allowance granted to him, which is arbitrary and liable to be quashed. Hence, the present writ petition.

3.The learned counsel appearing for the respondent seriously opposed the claim of the petitioner by contending that, as per the relevant Government Orders, the petitioner was not entitled to the grant of one advance increment in the post of Office Assistant, as he was appointed

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only on 17/12/2007. It was further submitted that, due to the pandemic situation, the internal audit report could not be acted upon immediately. Subsequently, on **02/12/2019**, the Internal Audit Wing of the Madurai Bench of Madras High Court pointed out that one increment had been inadvertently sanctioned to the petitioner though he was appointed on **17/12/2007**.

3.1.It was further submitted that only those appointed between 01/04/2003 and 31/12/2005 were eligible for the benefit. The clarification issued by the Internal Audit Wing in ROC No. 5/IAWMB/A/2018-2019, dated 02/12/2019, specifically stated that the benefit was applicable only to those appointed/promoted between 01/04/2003 and 31/12/2005. Accordingly, a recovery notice was issued to the petitioner, dated 16/04/2021 and subsequently, the respondent rightly passed the impugned order dated 07/12/2021 refixing the petitioner's pay and directing recovery of the excess amount. Therefore, he prayed for dismissal of the writ petition.

4**.** Heard both sides.

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5.The only objection raised by the respondent is that the petitioner is not entitled to the benefit of one advance increment in the post of Office Assistant, as he was appointed only on 17/12/2007.

6.It is not in dispute that the petitioner was initially appointed as an Office Assistant. Subsequently, he was promoted as Junior Bailiff on 04/10/2011 and then, as Senior Bailiff on 21/09/2015. He has been serving for the past 15 years.

7.Under G.O.(Ms.) No.1011, Home (Courts-V) Department, dated **07.12.2010**, issued based on the recommendations of the Justice Shetty Commission, the scales of pay of certain categories of ministerial staff were revised. The Government granted one increment at the initial stage of the revised pay scale with effect from **01.04.2003** to certain ministerial categories such as Sheristadar, Chief Clerk, Deputy Registrar and Assistant. The Government Order further provided that Senior Bailiffs, who had been placed on par with Junior Assistants and who had not been granted the benefit of pay revision should also be allowed to benefit of one increment at the initial stage of the revised pay scale, on

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par with the other ministerial categories recommended by the Justice Shetty Commission.

8.Thereafter, by G.O.(Ms.) No.450, Home (Courts-V) Department, dated **11.08.2011**, the Government extended the benefit of one increment at the initial stage of the pay scale to **18 common category posts** in the Ministerial Cadre. The said Government Order extended the the grant of one advance increment benefit to 15 additional categories and initial rate of pay scale admissible to common category has been omitted from G.O.(Ms.) No.1011, dated 07.12.2010. Accordingly, the petitioner was granted one increment and had been drawing the said benefit.

9.Subsequently, based on the audit objections for the years **2018–2019** dated 02.012.2019 **and 2021–2022** dated 25.10.2021, the Principal District and Sessions Judge, Srivilliputhur, by the impugned order, dated **07.12.2021**, directed re-fixation of the petitioner's pay and recovery of the alleged excess amount paid.

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10.The sole contention of the respondent is that the petitioner is not entitled to the benefit of one increment since he was appointed only on 17/12/2007. However, a careful reading of G.O.(Ms.) No.450, dated **11.08.2011**, shows that the benefit of one increment to the common category posts is confined only to employees appointed between **01.04.2003** and **31.12.2005**. The respondent has placed reliance solely on the clarification issued in Letter No.94577/Cts-V/2011-3, Home (Courts-V) Department, dated **29.03.2012**.

11.During the course of hearing, the learned counsel appearing for the respondent did not initially produce the aforesaid Government Letter. Upon the direction of this Court, a copy of the clarification, which was communicated on **02.04.2012**, was produced for the Court's perusal.

12.Upon the direction of this Court, a copy of the clarification issued on 02/04/2012 was produced, wherein certain clarifications sought by the Pay and Accounts Office, vide Letter No.PAO(HC/BAS-II/Unit-II/5/2011, dated 29/11/2011, were answered as follows:-

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S.No	Clarification sought	Reply
1.	Whether the benefit of one increment granted to the individuals is applicable to those appointed on or after 01.04.2003.	The benefit of one increment granted to the individual applicable to those appointed between 01.04.2003 and 31.12.2005.
2.	Whether the grant of one advance increment may be granted to the employees who were appointed after implementation of Tamil Nadu Revised Scale of Pay Rules, 2009, which were implemented with effect from 01.01.2006.	As the crucial cut of date is 01.04.2003 to 31.12.2005 i.e., before the implementation of Tamil Nadu Revised Scale of Pay Rules, 2009, the employees who had appointed after implementation of Tamil Nadu Revised Scale of Pay Rules, 2009 are not eligible for grant of one increment.
3.	Whether the benefit of grant of one increment may be made applicable to (i) new entrants to the service appointed as on day and in future also. It is presumed that the crucial cut off date is 01.04.2003 to 31.12.2005 i.e., before the implementation of Tamil Nadu Revised Scale of Pay Rules, 2009, and the individuals appointed within the above period may be treated as new entrant and sanctioned the benefit of one increment.	The benefit of grant of one increment will not be applicable to new entrants to the service appointed after the implementation of the revised scale of pay with effect from 01.01.2006. However, the individuals appointed within the 01.04.2003 to 31.12.2005 may be treated as new entrant and the benefit of one increment shall be sanctioned to them.

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13.This Court takes note of the judgment of the Hon'ble Supreme Court in ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others, reported in AIR 2015 SUPREME COURT 696 [(2015) 4 SCC 334]***, wherein the Supreme Court summarized the situations in which recovery of excess payments made due to the mistake of the employer would be impermissible in law. Paragraph 11 of the said judgment reads as follows:-

> "*11.For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside the orders of recovery made on the expressed parameters.*
>
> *(i).....*
>
> "*11.Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have*

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received the scale of Rs.330-560 since 1973 due to no fault on theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

....

(ii)Examining a similar proposition, this Court in Col. B.J.Akkara Vs. Government of India, (2006)11 SCC 709, observed as under:-

"28.Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep in his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess

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payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

.....

12.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. By that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise 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;

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(iii)Recovery from 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 to a higher post, and has been paid accordingly, even though he should have rightfully bee required to work against an inferior post;

(v)In any other case where the Court arrives at the conclusion, the recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

14.In the present case, the petitioner belongs to **Group D** category of the Tamil Nadu Judicial Ministerial Service. It is not the case of the respondent that the petitioner had secured the benefit of the advance increment by practising any fraud, misrepresentation, or suppression of material facts. The increment was granted solely on account of an error committed by the employer. Therefore, applying the

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law laid down by the Hon'ble Supreme Court in ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others*, reported in AIR 2015 SUPREME COURT 696,** this Court is of the considered view that the impugned order directing recovery of the excess amount paid to the petitioner cannot be sustained and is liable to be set aside.

15.Accordingly, the writ petition stands **allowed**, and the impugned order of the respondent dated 07/12/2021 is hereby set aside. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

(G.R.S.J) (R.P., J.)
28.07.2026

Index:Yes/No
Internet:Yes/No
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To,

The Principal District and Sessions Judge,
Srivilliputhur,
Virudhunagar District.

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G.R.SWAMINATHAN.,J

AND

R.POORNIMA, J.

er

Order made in

W.P(MD) No.5550 of 2022

28.07.2026

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