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W.P(MD) No.11083 of 2021

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.11083 of 2021
and
WMP(MD)No.8695 of 2021**

A.Kandhasamy : Petitioner

Vs.

1.The Deputy Secretary,
Home (Courts-V) Department,
Secretariat, Chennai-600 009.

2.The Additional District Judge,
Srivilliputhur,
Virudhunagar District

: Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in Letter No.94577/Cts-V/2011-3, dated 29/03/2012 and



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consequently the impugned order dated 05/10/2020 passed by the 2nd respondent, quash the both and direct the respondents to refund the amount already recovered from the petitioner's salary from October 2020 onwards and pass such further or other orders.

For Petitioner : Mr.R.V.Rajkumar

For 1st Respondent : Mr.T.Amjadkhan

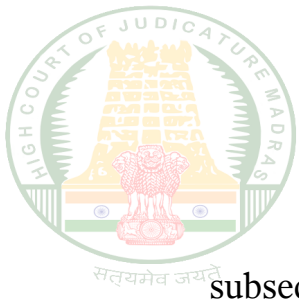
For 2nd Respondent : Mr.G.Thalaimutharasu

ORDER

R.POORNIMA,J:-

This writ petition has been filed seeking to quash the impugned order passed by the 1st respondent in Letter No.94577/Cts-V-2011-3, dated 29/03/2012 and consequently the impugned order dated 05/10/2020 passed by the 2nd respondent and direct the 2nd respondent to refund the amount already recovered from the petitioner's salary from October 2020 onwards.

2.The case of the petitioner is that he joined service as a **Reader** on 01/11/2006 and posted as Examiner on 08/10/2012 and thereafter, he was promoted as an Junior Assistant on 01/05/2013 and



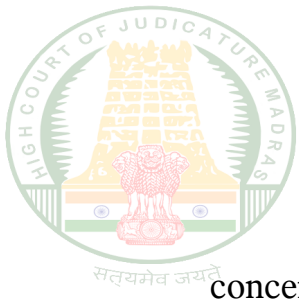
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subsequently, promoted as an Assistant and he is working in the same capacity under the 2nd respondent.

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 of the Tamil Nadu Judicial Ministerial Service, including Junior Assistant, Typist, Examiner, Reader, Senior Bailiff and Copyist.

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



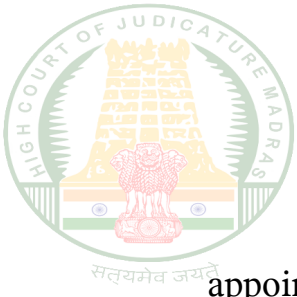
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concerned, the same was implemented through G.O.Ms.Nos.1011, 351 and 450, Home (Courts-V) Department, dated 07/12/2010, 30/06/2011 and 11/08/2011 respectively, with effect from 01/04/2003.

2.3 According to the petitioner, the posts of Sheristadar, City Court/District Court, Assistant, Junior Assistant and Senior Bailiff etc., are covered under G.O.Ms.No.1011, whereas the posts of Examiner, Reader, Typist, Copyist and Head Clerk in various Courts, including Judicial Magistrate Courts and Sub Courts, are covered under G.O.Ms.No.450. Accordingly, he was granted the benefit of one advance increment from the date of his appointment i.e., on 01/11/2006.

2.4. However, the 2nd respondent, by citing the impugned order of the 1st respondent, dated 29/03/2012 has passed the impugned order dated 05/10/2020 directing recovery of the advance increment already granted to the petitioner and that the pay should be refixed and excess pay should be recovered 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



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appointed/promoted thereafter. Since the petitioner was appointed on **01/11/2006**, it was held that he was not entitled to the advance increment.

2.5.The petitioner contended that the relevant Government Orders do not impose any such condition. According to him, the 2nd respondent passed the impugned order merely based on the audit objection. Therefore, the impugned order passed by the 2nd respondent is arbitrary, unreasonable and irrational, and has no nexus with the object sought to be achieved by the recommendations of the Justice Shetty Commission.

2.6.The petitioner further stated that the 2nd 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.

2.7.The petitioner further stated that he has now been directed to remit the excess pay amount as mentioned in the impugned order and



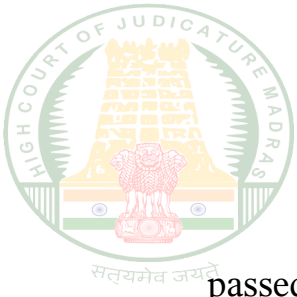
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that the pay should be re-fixed. Hence, the present writ petition.

3.The learned counsel appearing for the respondents is 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 Reader, as he was appointed only on 01/11/2006. 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 01/11/2006.

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 29/08/2023, specifically stated that the benefit was applicable only to those appointed/promoted between 01/04/2003 and 31/12/2005. Accordingly, the 2nd respondent rightly



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passed the order, dated 05/10/2020 refixing the petitioner's pay and directing recovery of the excess amount. Hence, they prays for dismissal of the writ petition.

4. Heard both sides.

5.The only objection raised by the respondents is that the petitioner is not eligible for one advance increment in the post of Reader since he was appointed only on 01/11/2006.

6.It is not in dispute that the petitioner was initially appointed as Reader and subsequently he was promoted as Junior Assistant and thereafter, as Assistant and he has been serving for the past 16 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



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ministerial categories such as Sheristadar, Chief Clerk, Deputy Registrar, Assistant, etc. 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 rate of the revised pay scale, on 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 including Category No.6 of Class-IV of the Tamil Nadu Judicial Ministerial Service, namely Reader and Examiner. 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 receiving the benefit.



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9.Subsequently, based on the audit objections for the years 2019-2020 dated 27.11.2019 and 2019-2020 dated 13.07.2020, the Additional District Judge, Srivilliputhur, by the impugned order, dated 05/10/2020 directed re-fixation of the petitioner's pay and recovery of the alleged excess amount.

10.The sole contention of the respondents is that the petitioner is not entitled to the benefit of one increment since he was appointed only on 01/11/2026. However, a careful reading of G.O.Ms.No.450, dated 11/08/2011 shows that it does not stipulate anywhere 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 respondents 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 for the respondents did not initially produce the said Government Letter. Upon the direction of this Court, a copy of the clarification, which was



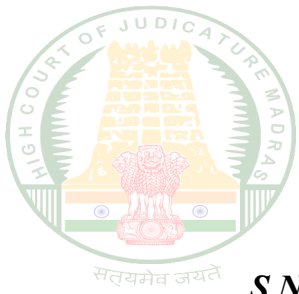
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communicated on 02/04/2012 was produced for the Court's perusal.

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:-

<i>S.No</i>	<i>Clarification sought</i>	<i>Reply</i>
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.



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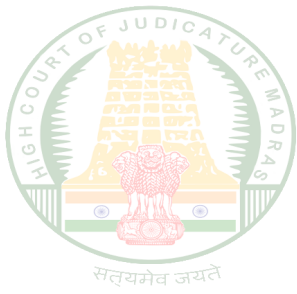
S.No

Clarification sought

Reply

- Whether the benefit of grant of one increment may be made applicable to (i) new entrants to the service increment will not be appointed as on day and inapplicable to new entrants to future also. It is presumed the service appointed after the that the crucial cut off date is implementation of the revised 01.04.2003 to 31.12.2005 scale of pay with effect from
3. i.e., before the 01.01.2006. However, the implementation of Tamil individuals appointed within Nadu Revised Scale of Pay the 01.04.2003 to 31.12.2005 Rules, 2009, and the may be treated as new entrant individuals appointed within and the benefit of one the above period may be increment shall be sanctioned treated as new entrant and to them.
- sanctioned the benefit of one increment.

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:-



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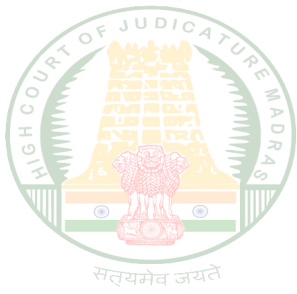
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“11.For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which 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 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.”

....



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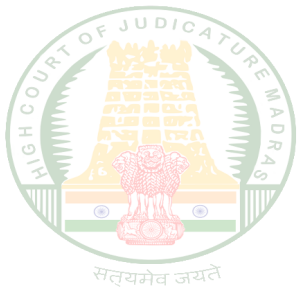


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(ii) *Examining a similar proposition, this Court in Col. B.J.Akkara Vs. Government of India, (2006)11 SCC 709, observed as under:-*

“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 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.”

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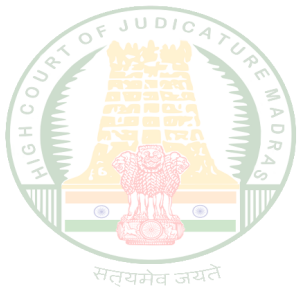
12.It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. By that as it may, based on the decisions referred to herein above, we may, as a ready reference, 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;

(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 been required to work against an inferior post;



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(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 C category of the Tamil Nadu Judicial Ministerial Service. It is not the case of the respondents 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 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 orders directing recovery of the excess amount paid to the petitioner cannot be sustained and is liable to be set aside.

15. The petitioner has also sought to quash the Letter No. 94577/Cts-V/2011-3, dated 29/03/2012 where it is not a communication



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addressed to him. The said letter is only clarificatory communication issued by the Home (Courts-V) Department to the Pay and Accounts Officer. It is not considered to be an Impugned order. Therefore, the prayer seeking to quash the said Letter is not maintainable and is accordingly dismissed.

16. Accordingly, the writ petition stands **allowed**, and the impugned order of the 2nd respondent dated 05/10/2020 is hereby set aside. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

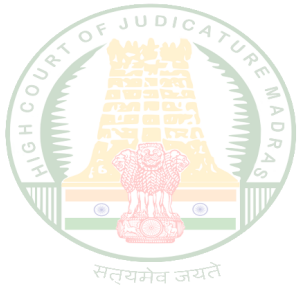
(G.R.S.J) (R.P., J.)

28.07.2026

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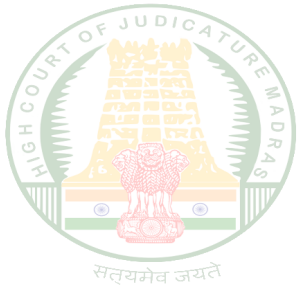
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To,

1.The Deputy Secretary,
Home (Courts-V) Department,
Secretariat,
Chennai-600 009.

2.The Additional District Judge,
Srivilliputhur,
Virudhunagar District



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W.P(MD) No.11083 of 2021

G.R.SWAMINATHAN.,J

AND

R.POORNIMA, J.

er

Order made in

W.P(MD) No.11083 of 2021

and

WMP(MD)No.8695 of 2021

28.07.2026