

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 03.06.2016****CORAM:****THE HONOURABLE Mr.JUSTICE T.RAJA****W.P. (MD) No.12857 of 2013****WEB COPY**

L.Micheal Ponnuchamy

... Petitioner

Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai 600 004.

2.The Deputy Inspector General of Police,
CBCID, SIDCO Industrial Estate,
Guindy,
Chennai 600 032.

3.The Superintendent of Police,
CBCID, SCB III,
Electronic Complex,
Guindy,
Chennai 600 032.

4.The Accountant General,
O/o The Accountant General,
Anna Salai, Chennai - 16.

... Respondents

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records and quash the impugned order passed by the 4th respondent in Pen 4/PPO No.C 67975/ Pol, dated 16.04.2013 and consequently, direct the 2nd respondent to refund the recovered amount of Rs.18,617/- with interest.

For Petitioner : Mr.A.Rajaram

For Respondents : Mr.S.Bharathi, G.A. for R1 to 3
Mr.P.Gunasekaran for R4**O R D E R**

The petitioner namely, Mr.L.Micheal Ponnusamy, who was working as Sub Inspector of Police and retired from service on 31.07.2008, has come to this Court, seeking to quash the impugned order, dated 16.04.2013, passed by the 4th respondent, the Accountant General, Chennai, and for a further direction to the 2nd respondent to refund the recovered amount of Rs.18,670/- with interest.



2. It is the case of the petitioner that he was appointed as Grade - II Police Constable on 10.01.1975 and, after serving for a long period, he retired from service on 31.07.2008 as Sub Inspector of Police. Whiles, on 21.11.2008, the 2nd respondent passed an order of recovery on the ground that the petitioner was paid excess increment of Rs.18,117/- and GSP amount of Rs.500/-.

3. The grievance of the petitioner is that the excess increment amount was recovered from the petitioner only after his retirement i.e., on 21.11.2008. In other words, the approach of the respondents in ordering recovery after retirement is bad in law and therefore, the same is liable to be set aside with a direction to the respondents to refund the said amount. The petitioner has also made a representation to all the respondents on 21.03.2013 to refund the recovered amount.

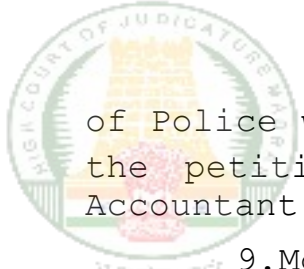
4. In the meanwhile, this Court, by an order dated 10.08.2011 passed in W.P.No.8918 of 2011, held that recovery proceedings passed after retirement should be set aside. Relying on the said order, the petitioner has come to this Court with the present Writ petition.

5. The learned counsel for the petitioner would submit that, admittedly, a sum of Rs.18,117/- was paid to the petitioner along with the GSP amount of Rs.500/- much prior to his retirement, and the amount cannot be recovered by the respondents after his retirement, more particularly, when he was allowed to retire from service on 31.07.2008.

6. A detailed counter affidavit has been filed by the 3rd respondent, Superintendent of Police.

7. The learned Government Advocate appearing for respondent Nos. 1 to 3 would submit that the prayer in the Writ petition is not maintainable as there is no challenge made to the main order of recovery, dated 21.11.2008. The petitioner has only challenged the communication, dated 18.04.2013, of the 4th respondent, Accountant General, Chennai, which was sent to the 2nd respondent, Deputy Inspector General of Police, Chennai, since the main order, dated 21.11.2008, has not been challenged, the present plea of the petitioner may have to be negatived.

8. It is seen that the petitioner retired from service on 31.07.2008 and even much prior to the date of his retirement, as per the instructions of the 4th respondent / Accountant General, Chennai, his pay was revised with effect from 01.06.2004 and a sum of Rs.18,617/-, being the OD pay and allowances was recovered from his DCRG amount and the same were credited into the Government account. A copy of the order was also communicated to the petitioner vide D.O.No.906/2008 dated 21.11.2008. Since the petitioner was not eligible for fixation of pay under Fundamental Rules Rule 22(b) for regularization to the post of Sub Inspector



of Police with effect from 01.06.2001 and there being no change in the petitioner's scale of pay, the 4th respondent namely, the Accountant General has rightly passed the order of recovery.

9. Moreover, the earlier pay fixation order issued to the petitioner vide D.O.No.1298/2005, dated 28.05.2005 was not in order. Therefore, the excess amount recovered from the petitioner's DCRG as per Rule 22(b) of the Fundamental Rules cannot be faulted with. This Court finds merits on the submission made by the learned Government Advocate.

10. Accordingly, the Writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Director General of Police,
Kamarajar Salai, Mylapore, Chennai 600 004.
2. The Deputy Inspector General of Police,
CBCID, SIDCO Industrial Estate,
Guindy, Chennai 600 032.
3. The Superintendent of Police,
CBCID, SCB III,
Electronic Complex, Guindy, Chennai 600 032.
4. The Accountant General,
O/o The Accountant General,
Anna Salai, Chennai - 16.

+1 CC to Mr.P.GUNASEKARAN , Advocate, SR No.28099
+1 CC to THE SPECIAL GOVERNMENT PLEADER , SR No.28027

W.P. (MD) No.12857 of 2013
03.06.2016

nbj
SH/DB:30.06.2016:3P/7C