



W.P.No.4913 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.4913 of 2023 & WMP.No.4927 of 2023

S.Singamuthu

... Petitioner

Vs

1. The State of Tamil Nadu
Represented by its Additional Chief Secretary to Government,
Home [Police] Department, Fort St. George, Chennai – 600 009.
2. The Director General of Police [L&O],
[Head of Police Force],
Office of the Director General of Police,
Mylapore, Chennai – 600 004.
3. The Commissioner of Police,
Chennai City, Vepery, Chennai – 7.
4. The Deputy Commissioner of Police,
Head quarters, Greater Chennai Police, Vepery,
Chennai.

... Respondents

Prayer:- Writ Petition filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call the records in pursuant to the impugned order issued by the fourth respondent in proceedings Na.Ka. No.



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S.F./ WZ/ 377/ 2139/ 2019 Ch.W.Z. Notification No.742/2019 dated 3.11.2019 and quash the same and to consequently direct the respondents 1 to 4 (i) to restore the pay of the petitioner and to accordingly refix his last drawn pay (ii) to refix his pension and pay the arrears of pension and (iii) to repay to the petitioner the recovered amount of Rs.1,84,822/-

For petitioner : Mr.V.Lakshmi Narayanan

For Respondents : Mr.M.Alagu Gowtham
Government Advocate

ORDER

This Writ Petition has been filed to quash impugned order passed by the fourth respondent dated 10.11.2019 and consequently direct the respondents 1 to 4 to restore the pay of the petitioner and to accordingly refix his last drawn pay and to refix his pension and pay the arrears of pension and to repay to the petitioner the recovered amount of Rs.1,84,822/-.

2. It is the grievance of the petitioner that the petitioner retired from service on 30.11.2018. However, the impugned Order has been passed by the fourth respondent for recovery of alleged excess payment made from 01.01.1998 to 30.11.2018 to the tune of Rs.1,84,822. According to the



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learned counsel appearing for the petitioner, as far as the fixation done by the respondents, he has no grievance. However, recovery cannot be effected pursuant to the G.O.Ms.No.286, dated 28.08.2018.

3. Since the writ petitioner is challenging recovery alone and he is not questioning re-fixation of the salary, the Writ Petition itself can be disposed of, as the law is well settled in respect of recovery. Pursuant to the direction of the Apex Court in ***State Of Punjab & Ors vs Rafiq Masih (White Washer) [(2015) 4 SCC 334]*** wherein it is held as follows:

“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 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 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 be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

since, the law is well settled in respect of recovery, there cannot be any recovery beyond five years and the petitioner is a Group C employee at the relevant point of time. In such view of the matter, the impugned is quashed in respect of recovery and as far as refixation is concerned, the impugned Order is confirmed.

4. Accordingly, this Writ Petition is partly allowed. No cost. Consequently, connected miscellaneous petition is closed.



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Index:Yes/No

Neutral Citation : Yes/No

vrc

To,

1. The Additional Chief Secretary to Government,
Home [Police] Department, Fort St. George, Chennai – 600 009.
2. The Director General of Police [L&O],
[Head of Police Force],
Office of the Director General of Police,
Mylapore, Chennai – 600 004.
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N.SATHISH KUMAR, J.

VTC

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