



W.P. Nos.24413, 24417, 24419 & 24421 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 20.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

and

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.24413 of 2023 & W.M.P. Nos.23844 and 23846 of 2023

W.P.No.24417 of 2023 & W.M.P. Nos.23848 and 23849 of 2023

W.P.No.24419 of 2023 & W.M.P. Nos.23852 and 23853 of 2023

W.P.No.24421 of 2023 & W.M.P. Nos.23858 and 23859 of 2023

C. Ramakrishnan

Petitioner in W.P. No.24413/2023

B. Shivaji

Petitioner in W.P. No.24417/2023

P. Valarmathi

Petitioner in W.P. No.24419/2023

T. Senbagavalli

Petitioner in W.P. No.24421/2023

v

1 The Registrar General
High Court of Madras
High Court campus
Chennai 600 104

2 The Principal Secretary to Government
Home (Courts V) Department
Fort St. George
Chennai 600 009

3 The Principal District Judge
Dharmapuri

4 The Principal Accountant General (A & E)
AG's Office (Audit) Complex
Anna Salai
Roast Revor Garden
Teynampet
Chennai 600 018

5 The District Treasury Officer
Dharmapuri



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The Subordinate Judge
Harur
Dharmapuri District

Respondents in all WPs.

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to the order dated 02.12.2022 *vide* ROC Nos.614/2022, 613/2022, 616/2022 and 615/2022 respectively, passed by the 6th respondent and quash the same as illegal and consequently, direct the respondents to continue to pay at the existing fixation of pay and not to recover the alleged excess amount paid to the petitioners.

For petitioners in
all WPs.

Mr. A. Sakthivel

For RR 1 3, & 6 in
all WPs

Mr. V. Ayyadurai, Sr. Counsel
assisted by Mr.Durai Eswar

For RR 2 & 5 in
all WPs

Mr. S. Silambanan
Addl. Adv. Gen. - II
assisted by
Mrs. V. Yamuna Devi
Special Govt. Pleader

For R4 in
all WPs

Mrs. Hema Muralikrishnan

COMMON ORDER

(made by S. VAIDYANATHAN, J.)

In view of commonality of the issue involved, these writ petitions are considered and decided by this common order.



2 A resume of the facts leading to the filing of these writ petitions is

as under:

2.1 Though all these four petitioners are now working as Junior Bailiff in the Subordinate Court, Harur, the post in which they joined the service is not the same.

2.2 While the petitioners in W.P. No.24417 and 24421 of 2023 were appointed as Masalchi (Class IV post), the petitioners in W.P. Nos.24413 and 24419 of 2023 were appointed as Night Watchman (Class IV post) and Full Time Masalchi (Class IV post) respectively.

2.3 While so, all of them were designated as Office Assistant (Class III post). To be specific, the petitioners in W.P. No.24413, 24417, 24419 and 24421 of 2023 became Office Assistants in 2008, 2008, 1999 and 1999, respectively and they were also given promotional increment therefor. Be it noted, the scale of pay for Class IV post in which they were appointed and Class III post, is one and the same.

2.4 According to the petitioners, though they were designated as Office Assistant, which post carried the same scale of pay of the post in which



they were appointed, they are eligible to get one increment as per G.O.Ms.No.145, P. & A.R. Department dated 19.04.1991.

2.5 However, citing Government Letter No.17507/5/85-4, P. & A.R. Department dated 24.07.1985, as per which, Class IV employees can be appointed to Class III posts only by way of transfer and not by way of promotion and based on the objections raised by the Internal Audit Wing of the Madras High Court and following the judgment of the Supreme Court in **State of Punjab v Rafiq Masih¹**, popularly known as White Washer's case, the incorrect higher fixation of pay was ordered to be recovered in 12 monthly instalments *vide* proceedings dated 02.12.2002 of the sixth respondent. In the said proceedings, it has been *inter alia* stated that the Government Order in G.O.Ms.No.145, *supra*, is not applicable to the petitioners.

2.6 Challenging the aforesaid proceedings and for a direction seeking payment of the existing pay and not to recover the so-called excess amount paid to the petitioners, the instant writ petitions have been filed.

3 Heard the learned counsel for the petitioners and perused the materials available on record.



4 Be it noted, even though the word used in the impugned proceedings is “promotion”, the time scale applicable to the post of Office Assistant and Night Watchman/Masalchi/Full Time Masalchi is one and the same and as such, the petitioners are not entitled to 3% increase on the pretext that they have been promoted. In other words, since the aforesaid posts carry the same scale of pay and the post of Office Assistant is not a promotional post, the petitioners are not entitled to 3% hike with one increment, as demanded by them.

5 However, the sixth respondent has initiated recovery proceedings after a lapse of 15 years in the case of the petitioners in W.P. Nos.24413 and 24417 of 2008 and 24 years in the case of the petitioners in W.P. Nos.24419 and 24421 of 2008 and as per the impugned order, such a recourse was taken in view of the judgment of the Supreme Court in **Rafiq Masih**, *supra*.

6 But, it is worth mentioning that the Supreme Court, in the very same judgment in **Rafiq Masih**, *supra*, has summarised certain situations, wherein, recoveries would be impermissible in law and those situations set out in paragraph 18 of the judgment in **Rafiq Masih**, *supra*, are extracted for ease of reference.



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

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

(emphasis supplied)

In view of the above, the recovery ordered at this distance of time cannot be allowed to stand. It is also pertinent to notice that **Rafiq Masih**, *supra*, has been reiterated by the Supreme Court recently in **Thomas Daniel v State of Kerala and Others**².

7 At this juncture, it will not be out of place to point out that this very Bench had an occasion recently to deal with an identical issue in **Narayanasamy v The Registrar, Madras High Court and 5 others**³, the relevant portion of which is extracted below for ready reference:

“9 Further, it is pertinent to point out that the Government of

<https://www.mhc.tn.gov.in/judis>

² 2002 LiveLaw (SC) 438

³ W.P. No.1162 of 2022 decided on 18.07.2023



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Tamil Nadu has also issued G.O.Ms.No.286, Finance (Pension) Department dated 28.08.2018 pursuant to the judgment of the Supreme Court in **Rafiq Masih** (*supra*) and the opening paragraph of the said Government Order is worth extracting:

“The Hon'ble Supreme Court in the case of State of Punjab & Others etc vs. Rafiq Masih (White Washer) etc. in CA No.11527 of 2014 (Arising out of SLP (C) No.11684 of 2012) wherein Hon'ble Court on 18.12.2014 decided a bunch of cases in which monetary benefits were given to employees in excess of their entitle due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information/misrepresentation/fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments.....”

In the aforesaid Government Order, at paragraphs 9 and 10, there is a clear direction as to how recovery should be done in the light of the judgment of the Supreme Court in **Rafiq Masih** (*supra*) and that delay in processing of fixation of pay/pension/family pension fixation with due approvals shall be avoided so as to avoid hardship to the employees/pensioners/family pensioners concerned.

10 In the light of the judgment of the Supreme Court and the aforesaid Government Order, we hope and trust that at least in future, while passing recovery orders, necessary details are stated therein enabling the employees/pensioners/family pensioners to defend themselves and know where they stand actually and the reasons to be so assigned in recovery orders are not supplemented in affidavits filed before the Court, which practice is deprecatory. In the case on hand, since recovery has already been made, we are of the view that no further adjudication is required to be made in this case and accordingly, this writ petition stands closed. Connected W.M.P. stands closed.

While parting, we hasten to add that though this is a fit case to impose costs on the Government, we refrain from doing so and rather, reserve it for other appropriate cases which amount shall be recovered from the erring officials.”



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8 In view of the above discussion, that portion of the impugned order insofar as it orders recovery from the petitioners, for no fault of theirs, is quashed and as for entitlement of 3% of basic pay, the petitioners cannot claim the same as a matter of right and to that limited extent, the impugned order is sustained. It is made clear that pursuant to the impugned order, if recovery has been effected by the respondents, further recovery shall not be effected.

This writ petition stands disposed of in the above terms. Costs made easy. Connected W.M.Ps. are closed.

(S.V.N., J.) (K.R.S., J.)
20.09.2023

cad



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S. VAIDYANATHAN, J.
and
K. RAJASEKAR., J.

cad

Common order in
W.P. Nos.24413, 24417, 24419 & 24421 of 2023

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