



W.P.(MD)No.13077 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**AND**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

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and

W.M.P.(MD)Nos.9755 & 9756 of 2019

M.Jaganathan

... Petitioner

Vs.

1.The Registrar General,  
Madras High Court, Chennai-104.

2.The Principal District Judge,  
Ramanathapuram District,  
Ramanathapuram.

3.The Principal Accountant General (A&E),  
Tamil Nadu, Teynampet, Chennai-18.

...Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order No.Nil, dated 30.04.2019 and the consequential impugned order No.Nil, dated 17.05.2019 passed by the 2<sup>nd</sup> respondent and quash the same as illegal and consequently, direct the respondents to disburse the full gratuity amount of Rs. 5,90,266/- (Rupees Five Lakhs Ninety Thousand Two Hundred and Sixty Six



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Only) and other terminal and pension benefits without any deduction to the petitioner.

For Petitioner : Mr.C.Arul Vadivel alias Sekar,  
Senior Counsel  
For R1 & R2 : Mr.T.S.Mohammed Mohideen  
For R3 : Mr.P.Gunasekaran

**ORDER**

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

The order of recovery dated 30.04.2019 issued by the learned Principal District Judge, Ramanathapuram to recover the excess payment of salary from the writ petitioner is under challenge in the Writ Petition.

2.The petitioner joined as Masalji on 06.06.1989 in Ramnad Sub Court. He was promoted as Office Assistant as well as to the post of Junior Bailiff. The petitioner retired on 30.06.2018 on attaining the age of superannuation. During the eve of his retirement, the authorities found that revised fixation of pay was done erroneously and the impugned order has been passed admittedly after the retirement of the writ petitioner. The petitioner was allowed to retire from service



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on 30.06.2018. The impugned order of recovery has been issued on 30.04.2019 nearly after the lapse about 10 months from the date of retirement.

3.The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that pay fixed with effect from 01.04.2003 is sought to be recovered after the lapse of several years and more so, after attaining the age of superannuation. Thus, the impugned order is untenable. It is further contended that the Government issued orders not to recover excess salary already paid to the Junior Bailiff. Thus, in any event, recovery is impermissible in the case of the writ petitioner.

4.The learned counsel appearing on behalf of the respondents 1 and 2 raised an objection by stating that erroneous or wrong fixation would not offer any right on the employees. Since the pay fixed in the case of the writ petitioner was found to be erroneous, action was initiated to recover the excess pay granted in favour of the writ petitioner. Such recovery is permissible under Rule 70(2)(b) of the Tamil Nadu Pension Rules, 1978. Thus, there is no infirmity and the Writ Petition is to be rejected.



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5.The learned counsel appearing for the 3<sup>rd</sup> respondent reiterated that under the Tamil Nadu Pension Rules, 1978 such recovery is permissible and more so, wrong fixation is not entitle the petitioner from securing benefits.

6.Considering the arguments as advanced between the parties, we are of the considered opinion that the authorities competent are empower to correct the fixation of pay if made erroneously. While doing so, if an employee has already been allowed to retire, then recovery cannot be imposed, since such recovery would affect the normal life of the retired employees. In the present case, the petitioner was allowed to retire from service on 30.06.2018 and the impugned recovery order was passed on 30.04.2019 and recovery of a sum of Rs.4,44,573/- (Rupees Four Lakhs Forty Four Thousand Five Hundred and Seventy Three Only) from a pensioner would affect his normal livelihood and as per the judgment of the Hon'ble Supreme Court of India, such recovery from the Group-IV and retired employees are impermissible.

7.In view of the facts and circumstances, the impugned order passed by the 2<sup>nd</sup> respondent vide proceedings dated 30.04.2019 is set aside and re-fixation



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done in accordance with the pay rules stands approved. Accordingly, this Writ Petition stands allowed. The amount withheld, if any pursuant to the impugned order, is directed to be settled in favour of the writ petitioner, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

**(S.M.S., J.) & (V.L.N., J.)**

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NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

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**AND**

**V.LAKSHMINARAYANAN, J.**

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