



Writ Petition No.2863 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.2863 of 2023

and

W.M.P.No.2978 & 2980 of 2023

A.Jeyamani

S/o.Late Arunachalam

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its
Additional Chief Secretary to the 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 Joint Commissioner of Police, (East Zone)
Greater Chennai Police,
Egmore, Chennai.

... Respondents



Writ Petition No.2863 of 2023

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records in pursuant to the impugned order issued by the fourth respondent in proceedings Na.Ka.n.Pension/EZ/E/275100-101/2021 dated 31.05.2022 and quash the same and to consequently direct the respondents to pay subsistence allowance to the petitioner from 01.02.2021 to till revocation of the suspension of the petitioner.

For Petitioner : Mr.V.I.Prashanth

For Respondents : Mr.P.Kumaresan
Additional Advocate General
assisted by Mr.P.Ganesan,
Government Advocate

ORDER

The facts of this case and the issue involved in the present writ petition were captured in the earlier order passed on 22.10.2024 and the same is extracted hereunder:

"This writ petition has been filed challenging the proceedings of the 4th respondent dated 31.05.2022, wherein steps were taken to recover a sum of Rs.13,70,666/- which was the excess payment made to the petitioner for the period from 01.11.2016 to 31.01.2021.

2.The case of the petitioner is that he was working as a Head Constable and by proceedings dated 31.10.2016, he was not permitted to retire from service on the ground that a criminal case is pending against him and accordingly, subsistence allowance



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was directed to be paid to the petitioner equal to the amount of provisional pension with effect from 01.11.2016.

3.The grievance of the petitioner is that the 4th respondent issued the impugned proceedings dated 31.05.2022 whereby a sum of Rs.13,70,666/- was sought to be recovered from the petitioner on the ground that excess payment has been made to the petitioner for the period 01.11.2016 to 31.01.2021. This order has been put to challenge in the present writ petition.

4.The respondents have filed counter affidavit. The relevant portions are extracted hereunder:

“9.It is respectfully submitted that the Petitioner is only eligible to get subsistence grant pay, restricted to provisional pension from the date of his retention of his service i.e., 31.10.2016, but he has got pay as he was paid as on 31.10.2016 for the period from 01.11.2016 to 31.01.2021. The Petitioner has complete knowledge that he is not eligible for full pay, but knowing the same, he did not inform to the office about receiving the pay wrongfully with an intention to cause loss to the government exchequer.

The details of the excess payment irregularly received by the Petitioner is as follows:

*Pay and other allowanced
paid to the petitioner for
the period from 01.11.2016
to 31.01.2021 - Rs.20,08,574/-*

*Eligible subsistence
allowance - Rs.6,37,906/-*

*Excess payment already
received by the petitioner - Rs.13,70,666/-*

10.It is submitted that with regard to contents raised in Grounds (a) to (g) of the Petitioner affidavit are unsustainable and there is no



contrary to law and in violation of the principle of natural justice in issuing the order as alleged by the Petitioner. More over the Joint Commissioner of Police, East Zone, Chennai vide Na.Ka.No.Pension/EZ/E-275100-101/2021, dated 31.05.2022 calling for explanation from the petitioner for getting full payment as he was not eligible to the same for the period from 01.11.2016 to 31.01.2021 and instructing to pay a sum of R.13,70,666/- ie., the excess payment of subsistence allowance to the Government account within a period of four weeks and further, if failure to pay, both criminal and departmental action will be initiated against him.”

5. The learned counsel for the petitioner submitted that the impugned proceedings of the 4th respondent is liable to be interfered by this Court on two grounds and they are:

(a) The petitioner is a Group-C category employee and therefore, for a wrongful fixation of pay, the recovery cannot be made from the petitioner. To substantiate this submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in **2015 (5) CTC 455** and

(b) The impugned order was passed by the 4th respondent without issuing any notice to the petitioner and without affording any opportunity and therefore, the same is liable to be interfered for violation of principles of natural justice.

6. Per contra, the learned Additional Advocate General appearing on behalf of the respondents submitted that the petitioner attained the age of superannuation on 31.10.2016. The petitioner was facing a criminal case which is in the stage of trial before the concerned Court. In view of the same, he was placed under suspension and he was not permitted to retire from service on reaching the age of superannuation on 31.10.2016. The petitioner was only eligible to get the subsistence allowance which will be equal to the amount of provisional pension with effect from 01.11.2016. Whereas, due to mistake, the full pay was made to the petitioner towards subsistence allowance for the period from 01.11.2016 to 31.01.2021. Thereby, a sum of Rs.20,08,574/- was



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paid and whereas the petitioner is only entitled for Rs.6,37,906/- towards subsistence allowance. In view of the same, excess amount paid to the petitioner was sought to be recovered.

7. The learned Additional Advocate General submitted that even if an opportunity is given to the petitioner, the fact remains that excess pay was made to the petitioner for the period from 01.11.2016 to 31.01.2021 and there can be no defense for receiving such excess pay beyond what was payable to the petitioner towards subsistence allowance. The learned Additional Advocate General further submitted that the petitioner cannot be permitted to retain the excess amount paid and it has to be necessarily recovered.

8. The learned counsel appearing on either side sought for some more time to place the relevant judgments before this Court.

9. Post this case under the caption 'part heard cases' on 28.10.2024 at 02.15 PM."

2. Heard Mr.V.I.Prashanth, learned counsel for petitioner, Mr.P.Kumaresan, learned Additional Advocate General appearing for respondents.

3. When the matter was taken up for hearing today, learned counsel for petitioner relied upon the judgment of the Apex Court in ***State of Punjab and others v. Rafiq Masih (White Washer) and others*** [2015 (4) SCC 334] and also the subsequent judgment of the Apex court in ***Jagdish Prasad Singh v. State of Bihar and others*** [2024 (5) CTC 433].



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4. *Per contra*, learned Additional Advocate General appearing on behalf of respondents placed reliance upon the order passed by this Court in W.P.(MD) No.8032 of 2015 *etc.* batch dated 14.06.2019. Learned Additional Advocate General specifically relied upon paragraph Nos.28 to 30 in that order and for proper appreciation, the same is extracted hereunder:

"28. The learned counsel for the fourth respondent / University relied upon the decision reported in the case of **State of Punjab and others v. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334**, the Apex Court, in paragraph-18, has 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:-

[1] Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

[2] Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

[3] 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.

[4] 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.

[5] 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."

29. There is no quarrel over the said proposition laid down. Also, this Court wishes to point out that, in a catena of decisions, the Courts have granted relief against recovery of excess payment of emoluments / allowances if: (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

30. Also in the case of Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur, it has been held that the relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

5. Learned Additional Advocate General also relied upon the order of the Division Bench of this Court in ***B.Usha v. Principal Labour***

Judge and others [2019 SCC OnLine Mad 16765]. The relevant



portions are extracted hereunder:

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"20. The Learned counsel appearing for the Respondents has also placed reliance on the judgment of our Hon'ble Apex Court reported in (2012) 8 SCC 417 : AIR 2012 SC 2951 in the case of *Chandi Prasad Uniyal v. State of Uttarakhand*, wherein, in Paragraph Nos.16 & 17, which reads as under:

"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over -payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government Officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc, because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Afbdul Qadir case (2009 AIR SCW 1871) (supra) and in Col.B.J.Akkara (Retd.) case (2006 AIR SCW 5252) (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered."

21. By applying Article 142 of the Constitution of India, to the above said judgment reported in (2015) 4 SCC 334 (cited supra), the Hon'ble Apex Court made an observation that



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recovery cannot be treated as a binding precedent. It has to be confined to the peculiar facts of that case.

22. Further, in the decision of the Hon'ble Supreme Court in *Indian Bank v. ABS Marine Products Private Limited*, (2006) 5 SCC 72 : AIR 2006 SC 1899, it is observed and held that "Courts should be careful to ascertain and follow the *Ratio Decidendi* and not the relief given on special facts, exercising power under Article 142 of the Constitution of India. Indeed, any sum received without an authority of Law can be recovered from the concerned person because of the simple fact that law enjoins an implied obligation on the part of the recipient to repay the money. Otherwise, it is a clean case of unlawful gain/unjust enrichment, as the case may be.

23. At the same time, it is the contention of the Learned Counsel for the First and Second Respondents that at the time of wrong fixation of salary, the Petitioner was working as a Head Ministerial Officer at Judicial Magistrate II, Tirupattur. The said fact was not disputed on the side of the Petitioner. In common, in all Magistrate Courts, the Head Ministerial Officer is the Next Officer to the Presiding Officer. He only maintains the Service Register of all the employees working in the above said Court. The Head Ministerial Officer can only prepare Pay Bill and put to his counter signature before getting approval from the Pay Drawing Officer, who is the Judicial Magistrate. In this case, the alleged occurrence happened only at the time, when the Petitioner was working as a Head Ministerial Officer at Tirupattur. After the retirement, now, the Petitioner contended that the said error was committed out of her knowledge. The said submission of the Petitioner is not having any merit and without showing the relevant documents, this Court is not inclined to accept the contention raised by the Petitioner straight away.

24. In fact, in the Government Order vide in G.O.Ms.No.286, Finance (Pension) Department dated 28.08.2018 passed by the Government of Tamilnadu, it is seen that based on the judgment of our Hon'ble Apex Court, issued a clarification in respect to the mode of recovery, as already pointed out by the Learned counsel for the Petitioner. Further, in the said Government Order, the responsibility was fixed on the Officer attributable to the Bill Passing Authority and ordered to recover



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the loss from the said Officers. But, in the case on hand, as already discussed, an error was committed only by the Writ Petitioner and not by the act of the other Officers. Further, as per the case of the Petitioner, the excess amount was recovered from the DCRG, to which she is entitled to receive.

25. In this aspect, it is relevant and useful to refer Rule 70 of the Tamilnadu Pension Rules, 1978 which reads as under:-

"70.Recovery and adjustment of Government dues:-(1) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues as ascertainable

(a) an equivalent cash deposit may be taken from him, or

(b) out of the gratuity payable to him an amount equal to that recoverable on account of ascertainable Government dues shall be deducted there from.

26. So also the above said provision is very clear that the ascertainable Government dues includes "Over payment of Pay and Allowances". Accordingly, the First Respondent is having the power to recover the "Over payment". Further, the said excess payment was recovered, only at the time of giving the Pension benefits to the Petitioner. Hence, it cannot be said that the recovery order was made after a long gap of time. More than that, as indicated by the Third Respondent, in the Service Register maintained by the officer of the employer, pertaining to the Petitioner, it was clearly held that the Petitioner gave an undertaking in respect to the recovery of over payment. After, giving assurance for recovering the over payment, now, the Petitioner filed the present Writ Petition and prayed for allowing the same, in order to waive the over payment, which was received nearly for the past 10 years. So also, the prayer sought for by the Petitioner in this Writ Petition is not based on any sound legal principle."



6. Learned Additional Advocate General submitted that eight officers, who were instrumental in fixing the provisional pension for the petitioner, were dealt with by initiating departmental proceedings and punishment of censure was imposed against all those officers.

7. The only issue that arises for consideration is as to whether the impugned proceedings issued by the fourth respondent dated 31.05.2022 requires the interference of this Court.

8. It is not in dispute that the petitioner was receiving subsistence allowance at the rate of 50% from 11.08.2005 to 11.02.2006. Thereafter, the petitioner was receiving 75% as subsistence allowance. When the provisional pension was directed to be paid to the petitioner through proceedings dated 31.10.2016 by the Joint Commissioner of Police, Egmore, Chennai, it was made clear that the provisional pension shall be equal to the subsistence allowance that was paid to the petitioner. It was also made clear that the rights that had accrued to the petitioner shall freeze at the level reached on the date of retirement and the salary shall not exceed the provisional pension which would have accrued to him on that date.



9. As stated in the previous order, this Court must see if any useful purpose will be served in setting aside the order and sending the petitioner back to participate in a fresh enquiry. In other words, what will be the defence that will be taken by the petitioner even if he is sent back to the fourth respondent for participating in a fresh enquiry. The rules of natural justice cannot be mechanically applied in all cases and one exception to this rule is where Useless formality theory applies. There may be occasions where no useful purpose will be served in ordering for an enquiry on the ground of violation of principles of natural justice when such opportunity will be of no use and the authority will be able to come to the very same conclusion even if such an opportunity is given.

10. In the case in hand, even if the petitioner goes back to the fourth respondent, the fact remains that what was payable to the petitioner was only a provisional pension, which is equivalent to the subsistence allowance that was received by the petitioner. The petitioner can never justify before the fourth respondent with respect to the full salary that was received by him every month towards provisional pension. Therefore, this Court holds that the impugned proceedings cannot be interfered on the ground of violation of principles of natural justice.

11. The next issue to be considered is as to whether the excess



amount paid to the petitioner can be recovered from the petitioner.

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12. Learned counsel for petitioner heavily relies upon the *White Washer's* case to justify that recovery proceedings initiated by the fourth respondent is unwarranted. There is no quarrel on the proposition of law that has been laid down in *White Washer's* case. The Courts normally grant the relief against recovery of excess payments made if

- (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee; and
- (b) such excess payment is made by the employer by applying a wrong principle of calculating the pay/allowance or on the basis of a particular interpretation of the rule/order, which is found to be erroneous subsequently.

13. The judgments on this issue have consistently taken note of one factor and that factor is if in a given case, the employee had the knowledge that the payment received was in excess of what was payable to him and even in cases where the error is detected or corrected within a

short time of such wrong payment, the Courts normally interfere with the



same.

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14. In the case in hand, the petitioner was kept under suspension. For a particular period, he was receiving 50% of the salary as subsistence allowance. Thereafter, he started receiving 75% of the salary as subsistence allowance. When he reached the age of superannuation, the order passed by the concerned authority shows that the provisional pension that is payable to the petitioner every month will be equal to the subsistence allowance that is payable to the petitioner. The petitioner is aware of the subsistence allowance that was paid to him when such an order was passed in the year 2016. While so, when the petitioner started receiving the provisional pension, he started receiving full salary, which the petitioner must have definitely known not to represent the subsistence allowance that is due and payable to the petitioner. Since the petitioner was getting a substantial amount, he found it convenient to keep receiving this amount and ultimately, it came to light. It is at this point, proceedings were initiated by the fourth respondent for recovery of excess amount paid to the petitioner.

15. The Courts must always keep in mind that what is paid as a



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salary to a public servant is the tax payers money which neither belongs to the officials who effected such over payment nor to the recipients.

While dealing with this issue, the principle that was enunciated by the Apex Court in the judgment in *Chandi Prasad Uniyal v. State of Uttarakhand* [2012 (8) SCC 417] must be kept in mind. Any amount paid without authority of law can always be recovered, more particularly, in a case where the person, who was receiving that amount knew that he is receiving in excess than what he is actually entitled to. The petitioner, in this case, was receiving full salary towards the provisional pension, whereas, what he is entitled to is the provisional pension, which is equivalent to the subsistence allowance that is payable to the petitioner.

16. In the light of the above discussion, this Court holds that the judgment of the Apex Court in *White Washer's* case will not come to the aid of the petitioner.

17. In the result, this Court holds that the proceedings of the fourth respondent dated 31.05.2022 does not suffer from any illegality and it does not warrant the interference of this Court.

N.ANAND VENKATESH, J



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In the result, this writ petition is dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

28.10.2024

Neutral Citation: Yes/No

Index: Yes/no

Speaking Order/Non-Speaking Order

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To

- 1.The Additional Chief Secretary to the 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,
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- 3.The Commissioner of Police,
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