



W.P.No.5818 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

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CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.5818 of 2024
and
W.M.P.Nos.6459 & 6461 of 2024

G.Prabakaran

... Petitioner

Vs.

- 1.The Registrar General,
High Court of Madras,
High Court Campus,
Chennai – 104.
- 2.The Principal Secretary to Government,
Home (Court V) Department,
Fort. Saint George,
Chennai – 9.
- 3.The Principal District Judge,
Dharmapuri.
- 4.The District Treasury Officer,
Dharmapuri.
- 5.The Principal Accountant General (A and E),



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AGS Office (Audit) Complex,
Anna Salai,
Roast Revor Garden,
Teynampet, Chennai – 600 018.

6.The Family Court Judge,
Dharmapuri District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 19.12.2022 vide ROC No.1914/2022 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 petitioner.

For Petitioner : Mr.A.Sakthivel

For R1, R3 and R6 : Mr.Arun Anbumani

For R2 and R4 : Mrs.P.Raja Rajeswari
Government Advocate

ORDER

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

This writ petition has been filed to set aside the order passed by the 6th respondent dated 19.12.2022 and further to direct the respondents to continue to pay at the existing fixation of pay and not to recover the alleged excess amount paid to the petitioner.

2. The petitioner was originally appointed as Night Watchman



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(Class IV Post) on 15.02.2011 in the judicial service. Thereafter, he was promoted to the post of Dalayat (Office Assistant) (Class III post) on 29.01.2014. Further, the petitioner was promoted from the post of Dalayat (Office Assistant) to the post of Driver on 24.10.2019.

2.1 According to the petitioner, he is eligible to get one increment as per G.O.Ms.No.145, P. & A.R. Department dated 29.01.2014, even though the scale of pay was identical one, which post carried the same scale of pay of the post in which he was appointed.

2.2 However, citing Government Letter No.17507/85-4, P&AR 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 Masih, popularly known as White Washer's case, the incorrect higher fixation of pay was ordered to be recovered in 56 monthly instalments *vide* proceedings dated 19.12.2022 of the 6th respondent. In the said proceedings, it has been inter alia stated that the Government Letter



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No.48211/Pay Cell/2021-1 dated 09.10.2012 is not applicable to the petitioner.

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2.3 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 petitioner, the present writ petition has 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 Watchment/Masalchi/Full Time Masalchi is one and the same and as such the petitioner is not entitled to 3% increase on the pretext that he has 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 petitioner is not entitled to 3% hike with one increment, as demanded by him.

5. However, the sixth respondent has initiated recovery proceedings



after a lapse of about 10 years 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.

“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 acquired 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.



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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.

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, the relevant portion of which is extracted below for ready reference:

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



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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



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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.”

8. In view of the above discussion, that portion of the impugned



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order insofar as it orders recovery from the petitioner, for no fault of him, is quashed and as for entitlement of 3% of basic pay, the petitioner 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. No costs.

Connected W.M.P.s are closed.

[S.M.S.J.] [K.R.S.J.]
06.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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