



WEB COPY



W.P.No.23167 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

W.P.No.23167 of 2023

K.Thanikachalam

... Petitioner

Vs.

1. The State Of Tamil Nadu
Rep. By Its Additional Chief Secretary To The Government,
Finance Department,
Chennai.

2. The Accountant General
Office Of The Accountant General (A And E), Tamil Nadu,
No.361, Anna Salai,
Chennai 600 018.

3. Deputy Accountant General (Pension),
Office Of The Accountant General (A And E), Tamil Nadu,
No.361, Anna Salai,
Chennai 600 018.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Mandamus, directing the 1st respondent



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to sanction/pay the amount of Rs.3,66,681.00 alleged to have been paid in excess and recovered from the Gratuity Bill of the petitioner

For Petitioner : Mr.V.Raghavachari for
Mrs.V.Srimathi, Senior Counsel

For Respondents : No Appearance

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The Writ of Mandamus has been filed to direct the first respondent to sanction/pay the amount of Rs.3,66,681/-, allegedly paid in excess and recovered from the Gratuity Bill of the petitioner.

2. The petitioner served as a Junior Bailiff (Process Server) in Judicial Department. He was appointed on 12.01.1987 and got retired from service on attaining the age of superannuation on 31.05.2018. During fixation of pension, the respondents found that excess payment was made to the petitioner and accordingly, they rectified the error and fixed the correct pay as admissible to the petitioner.



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3. It is needless to state that the pay fixation is to be done scrupulously in consonance with the Pay Rules and the Government Orders in force. Erroneous fixation, if any made, can be corrected by the competent authorities. However excess salary, if paid, cannot be recovered since the petitioner served as a Junior Bailiff, which is Group-D post.

4. Admittedly, an order of recovery was passed on 25.07.2018, by the learned Principle Labour Court, Vellore, after the retirement of the writ petitioner on 31.05.2018, the recovery of excess salary can be made, provided, if the fixation was done due to misrepresentation on the part of an employee or an undertaking has been given by an employee to repay any such excess paid amount. In the present case, neither of the situations arose and therefore, the petitioner is entitled for the relief. The excess payment was made based on the erroneous fixation done by the establishment for which the petitioner cannot be penalised.

5. In view of the facts and circumstances, the respondents are directed to verify the correctness of the fixation made for the petitioner and consequently, fix the pay/pension in accordance with the Pay Rules and



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the Government Orders in force. However the excess salary/ payment, if any made, alone is set aside.

6. It is brought to the notice of this Court that the recovery has already been made from the Gratuity amount. Thus, the respondents are directed to repay the recovered excess salary from the gratuity of the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

(S.M.S.J.,)

(K.R.S.J.,)

28.02.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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and

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