



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-02-2024

CORAM

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

WP Nos.29837 and 29840 of 2023

And

WMP Nos.29445, 29446, 29452 and 29453 of 2023

Krishnammal
K.Vijayalakshmi

.. Petitioner in WP 29837/2023
.. Petitioner in WP 29840/2023

-VS-

1.The Registrar General,
High Court of Madras,
High Court Campus,
Chennai-600 104.

2.The Principal Secretary to Government,
Home (Court V) Department,
Fort Saint George,
Chennai-9.



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3. The Principal District Judge,
Dharmapuri.

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

5. The District Treasury Officer,
Dharmapuri.

6. District Munsif Judge,
Palacode,
Dharmapuri District.

.. Respondents in both WPs

WP 29837 of 2023 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 14.10.2022 vide Office Order No.30/2022 passed by the sixth 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.

WP 29840 of 2023 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 14.10.2022 vide Office



Order No.30/2022 passed by the sixth 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 in both WPs : Mr.A.Sakthivel
For Respondents-1, 3 and 6
in both WPs : Mr.Karthik Ranganathan
For Respondents-2 to 5
in both Wps : Ms.P.Raja Rajeshwari,
Government Advocate.

COMMON ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

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

2. A resume of the facts leading to the filing of these writ petitions, are as under:-



The petitioner in WP No.29837 of 2023 was temporarily appointed as a Typist in District Munsiff cum Judicial Magistrate Court, Palacode through Employment Exchange by the learned Principal Sessions Judge, Dharmapuri at Krishnagiri dated 11.09.2008. Later she was appointed as Typist in Principal District Judge, Dharmapuri through TNPSC and presently she is working as Assistant in District Munsiff Court, Palacode, Dharmapuri District.

3. The petitioner in WP No.29840 of 2023 was appointed as a Full Time Masalchi in District Munsiff Court at Dharmapuri through Employment Exchange by the learned Principal Sessions Judge, Dharmapuri at Krishnagiri dated 09.04.2007. Later she was transferred and posted as Full Time Masalchi at Sub Court, Dharmapuri. Subsequently she was transferred and temporarily posted as Record Clerk at District Munsiff cum Judicial Magistrate Court at Pennagaram. Now she is working as Junior Bailiff at District Munsiff Court, Palacode, Dharmapuri District.



4. To be specific, the petitioners were also given promotional increments 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.

5. According to the petitioners, though they were designated as 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.

6. 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 Masih**¹, 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

¹ (2015) 4 SCC 334



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.

7. 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.

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

9. 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.

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10. However, the sixth respondent has initiated recovery proceedings after a lapse of about 15 years in both the cases and as per the impugned order, such a recourse was taken in view of the judgment of the Supreme Court in **Rafiq Masih**, *supra*.

11. 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 required to discharge duties of a higher post, and



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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 vs. State of Kerala and Others**².

12. 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 vs. 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 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

² 2002 LiveLaw (SC) 438

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



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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.”



13. 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.

14. With the above observations, both the writ petitions stand partly allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

20-02-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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