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W.P.Nos.29885, 29797 & 29880 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN**

**W.P.Nos.29885, 29797 & 29880 of 2024 and
C.M.P.Nos.32586, 32589, 32486, 32583 & 32584 of 2024**

W.P.No.29885 of 2024

T.Raja

... Petitioner

Vs.

1.The Registrar General,
High Court, Madras – 104.

2.The Principal District Judge,
Tiruppur.

3.The I Additional District and Sessions
Court Judge,
Tiruppur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of recovery order in proceeding No.35 of 2024 dated 18.07.2024 passed by the 3rd respondent for recovery of excess pay of Rs.2,36,649/- from the petitioner and quash the same.



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For Petitioner

: Mr.S.Tamilselvan

For R1 to R3

: Mr.M.Palanimuthu
Standing Counsel

W.P.No.29797 of 2024

P.Prabakaran

... Petitioner

Vs.

1.The Registrar General,
High Court, Madras – 104.

2.The District Judge cum Chief Judicial Magistrate,
Udhagamandalam.

3.The Chief Administrative Officer,
District Court, Udhagamandalam.

4.The Principal District Judge,
Erode.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of recovery order in proceeding No.133 of 2022 dated 19.04.2024 passed by the 3rd respondent and quash the same and consequently direct the respondents to remit back the recovered amount of Rs.1,27,914/- to the petitioner.

For Petitioner

: Mr.S.Tamilselvan

For R1 to R3

: Mr.V.Chandrasekaran
Standing Counsel



W.P.Nos.29885, 29797 & 29880 of 2024

W.P.No.29880 of 2024

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B.Gopalakrishnan

... Petitioner

Vs.

1.The Registrar General,
High Court, Madras – 104.

2.The Principal District Judge,
Tiruppur.

3.The Special District Judge,
Special District Court for MCOP Cases,
Tiruppur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of recovery order in proceeding No.14 of 2024 dated 24.07.2024 passed by the 3rd respondent for recovery of excess pay of Rs.1,94,851/- from the petitioner and quash the same.

For Petitioner : Mr.S.Tamilselvan

For R1 to R3 : Mr.M.T.Arunan
Standing Counsel

COMMON ORDER

(Order of the Court is made by *R.SURESH KUMAR, J.*)

Since the issues raised in all these writ petitions are one and the same, with the consent of the learned counsel appearing for both sides, all these writ petitions have been heard together and are disposed of by this common order.



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2. That the challenge that has been made in all these writ petitions is with regard to the re-fixation as well as the recovery of the excess amount paid to them especially in the context of the personal pay or Grade Pay of 5% paid to these employees.

3. Though in each of the cases, such a payment had been made long years back and the present impugned orders in these writ petitions respectively have been issued either in the year 2022 or in the year 2024, which is beyond the 5 years period mandatorily fixed by the Hon'ble Apex Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others***, reported in ***(2015) 4 SCC 334*** where one of the situations, which has been mentioned by the Hon'ble Supreme Court of India in Paragraph 18 of the judgment is that the recovery would be impermissible in law as the recovery from the employees of the excess payment has been made for a period beyond five years, before the order of recovery is issued.

4. Admittedly, in all these cases, the payment has been made excessively long back and beyond the five years period. Since these recovery orders now have been made, insofar as the recovery portion is concerned, we have no



hesitation to hold that such orders cannot be sustained. However, with regard to the re-fixation of salary is concerned, such a fixation is strictly in consonance with the relevant Service Rules, under which, what was the entitlement and eligibility of the pay alone an employee since should be entitled to get, such a re-fixation become inevitable, which, of course rightly issued by issuing such proceedings by the employer. Therefore, to that extent, the order impugned passed in all these writ petitions insofar as the re-fixation of the salary is concerned, perfectly in order. Hence, we do not wish to interfere with the same and that portion of the order of re-fixation of salary in respect of these petitioners are concerned, the respective impugned orders are approved.

5. Insofar as the recovery that has also been passed in one case in W.P.No.29797 of 2024, though the recovery also seems to have been completed, we feel that such recovery become impermissible as the Hon'ble Supreme Court of India held so in the said case i.e., ***State of Punjab and others vs. Rafiq Masih (White Washer) and others*** (cited supra). That apart, the Hon'ble Division Bench of this Court in W.P.Nos.19224, 19225 & 19227 of 2022 dated 16.02.2024, passed a detailed order, not to make such a recovery and pursuant to the said order passed by the Hon'ble Division Bench, in fact, the Registrar General of this Court issued a Circular dated 14.10.2024 in



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Roc.No.81563/A/2022/G2, whereby the Principal District Judges in the State of Tamil Nadu were directed to adhere to the above directions issued by the Hon'ble Division Bench and suitably instruct all concerned under their control, accordingly, not to make any recovery of such an excess payment especially in the context of 5% personal pay across the State of Tamil Nadu.

6. Therefore, for all these reasons, the recovery proposed through the impugned orders cannot be sustained. Resultantly, all the writ petitions are ordered partly, whereby the recovery part of the impugned orders are set aside and re-fixation of the salary in respect of these employees is upheld. Insofar as the writ petition in W.P.No.29797 of 2024 is concerned, the recovered amount shall be refunded by the employer to the employee concerned within a period of three (3) months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) (C.S.N., J.)
18.12.2024

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



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To

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High Court, Madras – 104.
- 2.The Principal District Judge,
Tiruppur.
- 3.The I Additional District and Sessions
Court Judge,
Tiruppur.
- 4.The District Judge cum Chief Judicial Magistrate,
Udhagamandalam.
- 5.The Chief Administrative Officer,
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- 6.The Principal District Judge,
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- 7.The Special District Judge,
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R.SURESH KUMAR, J.
AND
C.SARAVANAN, J.

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