



WP(MD). No.12733 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 14/06/2024

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The Hon`ble Ms.Justice R.N.MANJULA

**WP(MD). No.12733 of 2024
and WMP(MD) No.1341 of 2024**

M.Janakiraman (Rtd Si),

... Petitioner

Vs

1. The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai 600 004..

2. The Commissioner of Police,
Tirunelveli City,
Tirunelveli..

3. The Deputy Commissioner of Police,
Head Quarters,
Tirunelveli City,
Tirunelveli..

4. The Accountant General (Accounts and Entitlements),
No.361, Anna Salai,
Teynampet,
Chennai – 18..

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus,



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calling for the records pertaining to the impugned order issued by the 4th respondent in PO5/3/10533250/ADK dated 08.06.2023 and the consequential impugned order issued by the 3rd respondent in C.No.B1/7579/2023 CPO No.680/2023 dated 10.08.2023 and the consequential impugned order issued by the 2nd respondent in impugned Memorandum in Na.Ka.No.H1/Pension-12/2023 dated 18.10.2023 and quash the same as illegal and consequently direct the respondents 2 and 4 to give the recovery amount a sum of Rs.1,93,857/- (Rupees One Lakh Ninety Three Thousand Eight Hundred and Fifty.

For Petitioner : Mr.A.Rajaram
For Respondents : Mr.M.Lingadurai for R1 to R3
Special Government Pleader
Mr.P.Gunasekaran for R4

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.Heard Mr.A.Rajaram, learned counsel for the petitioner, Mr.M.Lingadurai, learned counsel for the respondents 1 to 3 and the learned counsel for the 4th respondent.

3. The petitioner, who is a pensioner and who has retired on 31.05.2023, has filed this writ petition challenging the impugned order of



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the 4th respondent dated 08.06.2023 and the consequential impugned order issued by the 3rd respondent in dated 10.08.2023 and the consequential impugned order issued by the 2nd respondent dated 18.10.2023 and consequently to direct the respondents 2 and 4 to give the recovery amount a sum of Rs.1,93,857/- (Rupees One Lakh Ninety Three Thousand Eight Hundred and Fifty).

4. The impugned recovery order dated 10.08.2023 has been issued pursuant to the audit objection raised by the 4th respondent stating that the petitioner is not entitled to the pay anomaly, which is claimed for the period from 01.02.2011 to 31.05.2023 on par with his juniors. The audit objection is to the effect that the person with whom the petitioner claims parity is not junior to him and hence, his pay has to be refixed and the excess amount paid to the petitioner should be recovered.

5. It is needless to state that the petitioner being a pensioner, recovery cannot be made against him, since no recovery can be made for no fault on him, the petitioner's case is squarely covered under the decision of the Hon'ble Supreme Court in the case of ***State of Punjab***



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and Others Vs. Rafiq Masih (White Washer) and others reported in **2015 (4) SCC 334**, wherein, it is held that recoveries by the employers, would be impermissible in law and the relevant portion reads as follows:

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii)

(iii) 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.”

6. However, in respect of re-fixation, the order of the third respondent seem to be passed is without giving any notice to the petitioner. Only if a show cause notice is given to the petitioner along with the audit objection of which the pay is subjected to revision, the petitioner can made an effective representation. Only on considering his representation, the third respondent can consider the possibility of submitting any clarification to the audit objection and thereafter pass appropriate orders in accordance with law.

7. Hence, the writ petition is disposed of by directing the third respondent to issue a show cause notice to the petitioner calling for an



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explanation from the petitioner and on such notice, the petitioner is directed to send his explanation along with his representation and on receipt of the same, the third respondent shall consider the same and pass orders on merits and in accordance with law. No costs. Consequently connected Miscellaneous Petition is closed.

14.06.2024

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TO

1. The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai 600 004..

2. The Commissioner of Police,
Tirunelveli City, Tirunelveli..

3. The Deputy Commissioner of Police,
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