



W.P.(MD)Nos.14092 of 2024 etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 31.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)Nos.14092 & 2935 of 2024 and 23986, 19750 , 20081, 21711 &
22423 of 2023

and

W.M.P.(MD)Nos.12367, 12368 & 13423 of 2024 and 20143, 23819, 16305,
23818, 16548, 23823, 18111, 23815, 23811 & 23814 of 2023

W.P.(MD)No.14092 of 2024:

Maria Sahaya Berneth Diaz (Rtd SSI)

... Petitioner

Vs.

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

2.The Commissioner of Police,
Tirunelveli City, A.R.Line Road,
Palayamkottai,
Tirunelveli.

3.The Accountant General (Accounts & Entitlements),
No.361, Anna Salai, Tayampet,
Chennai-18.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for
issuance of Writ of Certiorarified Mandamus, to call for the records pertaining



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to the impugned Report issued by the 3rd respondent in No.AG(A and E)/PEN PO5/10530717/1/R0530717 dated 26.11.2021 and the consequential impugned order passed by the 2nd respondent in C.No.B1/22367/2023 dated 18.05.2024 and quash the same as illegal and consequently direct the respondents to refund/reimburse the recovery amount a sum of Rs.1,44,980/- (Rupees One Lakh Forty Four Thousand Nine Hundred and Eighty only) to the petitioners account, within the time frame that may be fixed by this Court.

In all petitions:

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

COMMON ORDER

The petitioners have filed these Writ Petitions challenging the order of refixation of their pay and the consequential recovery and for a direction to the respondents to refund the recovered amount to the petitioners within a specified time frame.

2. Heard the learned counsel appearing on either side and perused the materials place on record.

3. The petitioners had voluntarily retired from service as Special Sub Inspectors of Police in the years 2020, 2021, 2022, respectively. The



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petitioners contended that on the premise that the pay of the petitioner has been fixed wrongly during the pay revision, the petitioners' pay has been re-fixed, due to which the order of recovery has been passed.

4. So far as the recovery element is concerned, the petitioners are no way responsible for fixation of pay or they did not contribute for the fixation of incentive increment allowed to them. Hence, the petitioners' cases are squarely covered under the decision of the Hon'ble Supreme Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and others*** reported in **2015 (4) SCC 334**, wherein 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.”

5.The recovery is sought to be made after five years. Hence, the recovery would fall under clauses (iii) of the impermissible recovery as settled down in the '**White Washer**' case. Since the recovery is impermissible in law as per the decision cited supra, recovery order is liable to be set aside.



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6. Since the impugned order has been given without putting the petitioners on notice, the same is liable to be set aside. Hence, the same shall be done, after issuing notice to the petitioners and giving them an opportunity to make their submission.

7. In view of the same, these writ petitions are allowed and the impugned orders dated 26.11.2021, 18.05.02024, 29.01.2024, 20.03.2023, 31.01.2023, 22.08.2022, 08.10.2021 and 13.02.2023, respectively in respect of recovery is set aside once far all and in respect of revised fixation, the impugned order passed by the authorities concerned is set aside for want of notice. The authorities concerned are directed to issue notice to the petitioners before re-fixing the pay for the reasons stated therein and afford an opportunity to the petitioners to make their submissions and then pass appropriate orders. It is needless to add here that the recovered amount, if any, shall be refunded to the petitioners forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

31.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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