



W.P.(MD)No.18427 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.18427 of 2024

and

W.M.P.(MD)No.15674 of 2024

N.Ebanesar

... Petitioner

Vs.

- 1.The Director General of Police,
Mylapore, Chnnai-4.
- 2.The Accountant General,
Office of the Accountant General,
No.361, Anna Salai,
Tenyampet, Chennai-18.
- 3.The Deputy Inspector of Police,
Tirunelveli Range, Palayamkottai.
- 4.The Superintendent of Police,
Thoothukudi District,
Collectorate Complex,
Thoothukudi.

... 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 the impugned order C.No.D5/37206/128/2021 D.O.No.1341/2021 dated 16.11.2021 and Na.Ka.No.D3/714/35146/2023 Ma.Aa.No.1181/2023 dated 05.10.2023 issued by the 4th respondent and quash the same consequently direct the respondents to sanctioned increment for the retrospective dates of



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promotion in grade -1 Police Constable and Sub Inspector of Police post and also release 20 percentage Death cum retirement gratuity withheld by the respondents with 12 percentage interest.

For Petitioner : Mr.A.Gandiappan
For R2 : Mr.P.Gunasekaran
Standing Counsel
For R1, R3 & R4 : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

Heard Mr.A.Gandiappan, learned counsel appearing for the petitioner, Mr.N.Ramesh Arumugam, learned Additional Government Pleader for the respondents 1, 3 and 4 and Mr.P.Gunasekaran, learned Standing Counsel appearing for the second respondent.

2.By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

3.The petitioner has filed this writ petition challenging the order of re-fixation and recovery dated 16.11.2021 and 05.10.2023 and for a consequential direction to the respondents to sanction the increment for the retrospective dates of promotion in Grade-I Police Constable and Sub-Inspector of Police posts and to relase 20% death cum retirement gratuity withheld by the respondents with 12% interest.



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4.The learned counsel for the petitioner submitted that the petitioner, who was working as a Sub Inspector of Police, retired from service on 30.06.2023 on attaining the age of superannuation. The pay of the petitioner has been refixed on the allegation that he has been given with excess payment, without even putting the petitioner on notice. Thereafter, in pursuant to the audit objection raised by the second respondent on the pension proposal submitted by the fourth respondent, an order of recovery been passed.

5.Whenever an audit objection is made regarding any of the monetary benefits given to the employees, it is obligatory on the part of the employer or the pay drawing authorities to give an explanation as to how the sanction is in accordance with the rules. But it is surprising to see every audit objection is resulted in knee jerk action of recovery without giving any notice to the employees, who will be affected by the issuance of sudden recovery order.

6.So far as the recovery element is concerned, even for any reasons, the petitioner cannot be allowed to suffer recovery for the inadvertent payment made by the respondents. The petitioner is no way responsible for fixation of pay. Hence, the petitioner's case is 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.”

7.The petitioner was serving as a Sub-Inspector of Police at the time of his retirement and he would fall under Group-C category of the employees and the recovery is sought to be made after five years. The petitioner has not suppressed any material facts in order to induce the authorities to make excess payment to him. Hence, the recovery would fall under clauses (i) and (iii) of the impermissible recovery as settled down in the '**White Washer's**' case. Since the recovery is impermissible in law as per the decision cited supra, the same is liable to be set aside.

8. Insofar as the re-fixation of pay of the petitioner on the ground that the pay has been wrongly fixed and it will reflect upon the pension, is concerned, the re-fixation order has been made without putting the petitioner on notice and the same is liable to be set aside.



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9. In view of the same, this writ petition is allowed and the order of recovery dated 05.10.2023 and the order of re-fixation of pay dated 16.11.2021 are hereby set aside. The fourth respondent is directed to issue notice to the petitioner with regard to the issue of re-fixation of pay within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the petitioner is at liberty to make his submission by raising all his contentions within a period of two weeks therefrom. Thereafter, the fourth respondent shall pass order with regard to the re-fixation of pay, if any and furnish a copy of the same to the petitioner and the fifth respondent, who after receiving the same, shall settle the retirement benefits of the petitioner forthwith. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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R.N.MANJULA, J.

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