IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.482 of 2023
and
W.M.P.No.433 of 2023

1. T.C.Mohan Raj
2. R.Thirumalaisamy
3. P.Kannan
4. Krishnamoorthy ... Petitioners

Vs

1. The Director,
Tamilnadu Fire Service,
No.17, Rukmani Lakshmipathi Road,
Egmore, Chennai – 600 008.

2. The District Fire Service Officer,
Erode, Erode District. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India seeking to issue Writ of Certiorari calling for the records pertaining to the order passed by the 2nd respondent in Na.Ka.No.12875/AA1/2022, dated 23.12.2022 to recover the increment from the petitioners salary and quash the same as illegal and arbitrary.

For Petitioners : Mr.K.Srinivasan

For Respondents : Mr.P.Ananda Kumar
Government Advocate for R1 and R2

ORDER

The writ petition has been filed for the following relief :

" To issue Writ of Certiorari calling for the records pertaining to the order passed by the 2nd respondent in Na.Ka.No.12875/AA1/2022, dated 23.12.2022 to recover the increment from the petitioners salary and quash the same as illegal and arbitrary."

2. It is the case of the petitioners that they had joined the services of Fire Department in the year 2001 and worked with dedication and efficiency. In consideration of hard work and the number of years of service they had put in, the respondent-Department had granted increment to the petitioners on 11.10.2017 in par with G.O.No.303 Finance Department and G.O.(Ms) No.777, Home (Police-XVII) Department,

dated 23.07.2018. The salary of the petitioners was increased to Rs.31,300/- per month and this increase was with effect from 01.12.2017.

3. The petitioners would submit that they have been receiving their salary with increment for the last five years. All of a sudden, by an order of the second respondent dated 23.12.2022, the increment granted to them on 11.10.2017 is cancelled and subsequent orders were passed to recover the sums paid in excess. The petitioners would submit that this order came in as a shock to them, as they have not committed any fraud or illegal act and that they have been given this increment only in consideration of their efficiency and dedication to work. The increment awarded to them was solely on the basis of merit. That apart, it is the contention of the petitioners that after five years of granting increment to them, the respondents cannot revoke the increment order or recover the amount from them, as they belonged to 'IV Group' or 'D Group'

employees. Therefore, challenging the impugned order dated 23.12.2022, the petitioners are before this Court,

4. The second respondent has filed the counter affidavit, wherein, they have discussed in detail the appointment of petitioners, training given to them etc., They have also set out in detail about the ban on direct recruitment to fill up the vacant posts, the appointment orders issued after lifting of ban and the training provided to the recruited persons. The respondents would submit that pursuant to the Tamil Nadu Revised Pay Scale Rule 2017 (vide G.O.Ms.No.303 Finance (Pay Cell) Department dated 11.10.2017), the petitioners has opted to fix their pay and had switched over to the Revised Pay Scale Rules with effect from 01.12.2017. Later, this was found to be inapplicable to the petitioners as per Rule 6 of the Tamil Nadu Revised Pay Scale Rules, 2017, and that a clarification also has been issued by the Government by letter dated 13.11.2017. The Government has clearly clarified that the option to switch over to the Tamil Nadu Revised Pay Scale Rules, 2017, can be exercised only by the

persons whose promotion was between 01.01.2016 and 11.10.2017, whereas, the petitioners herein were promoted as Leading Firemen only on 01.12.2017, which was after the cut-off date i.e., 11.10.2017, prescribed in Rule 6 of the Tamil Nadu Revised Pay Rule 2017.

5. It is the further case of the respondents that the petitioners have given an undertaking, while they exercised their option, which reads as follows :

> *" I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the government either by adjustment against future payments due to me or otherwise without insisting for any prior notice."*

6. It is the further case of the respondents that the petitioners were appointed as Fireman on 01.12.2002, and vide G.O.Ms.No.777, Home

(Police-17) Department, dated 23.07.2018, they were upgraded as Leading Fireman on 01.12.2017, after completing their service of 15 years and based on the option given to them, the VII Pay Commission was fixed after fixation of pay in the promotion post of upgraded Leading Fireman. The details of pay fixation are as follows:

Details of Pay fixation	Pay fixed
Basic Pay as on 01.12.2017 after sanction of increment in the post of upgraded Leading Fireman	Rs.12,100/-
Pay fixation as per 7th Pay Commission :- 12100 x 2,57 = 31,097 (or) 31,300/- (Level-8, Cell. 17)	Rs.31,300/-
Next increment date	01.10.2018

7. It is also alleged by the learned counsel appearing for the respondents that the first respondent by its memorandum dated 02.07.2020, has clarified the pay fixation and also had instructed the second respondent to revise the pay fixation as per the government letter dated 13.11.2017. The second respondent would further submit that in the Departmental Audit conducted by the Office of the second respondent from 01.04.2015 to 31.03.2020, the second respondent was directed to

revise the pay of the persons who were appointed on 01.12.2002 and upgraded as Leading Fireman promotion with effect from 01.12.2017 and drawing a pay of Rs.35,200/- as on 01.10.2021 and a compliance report in this regard has to be submitted to them. Therefore, the second respondent vide its impugned proceedings dated 23.12.2022 has revised the pay of the petitioners and it has also ordered that the revised pay would be implemented with effect from 01.01.2023 and with regard to the recovery of excess pay and allowances for the period from 01.12.2017 to 31.12.2022, separate orders would be issued and the excess payment made for the above said period will be deducted and remitted to the treasury of the government. Aggrieved by the said order of the second respondent, the petitioners are before this Court.

8. Heard the learned counsel for the petitioners and the learned Government Advocate appearing for respondents 1 and 2.

9. Admittedly, the petitioners belong to 'Group IV' or 'D-Group'

employees. The petitioners have been granted an increment as per the Administrative Orders dated 11.10.2017, and their salary was enhanced to a sum of Rs.31,300/- per month and the revised pay is being paid to the petitioners till the date of the impugned order i.e., on 23.12.2022. All of a sudden, without notice to the petitioners, the impugned order has been passed by the second respondent, *inter alia* to recover the excess pay paid to them from 01.12.2017 till 31.12.2022.

10. The Hon’ble Supreme Court in ***State of Punjab & Ors Vs Rafiq Masih*** reported in **(2015) 4 SCC 334**, which goes by the moniker ***White Washer case***, has dealt in detail a batch of cases, whether the monetary benefits given to the employees in excess of their entitlements by its employer, can be recovered by an order of recovery. The Hon'ble Supreme Court, after analysing the case, has summarised few situations where recoveries from the employees are impermissible in law. Two of such situations would squarely apply to the case on hand. The Hon'ble Supreme Court has held that the recoveries cannot be made against the

employees, in case where (i) the employees belong to Class-III and Class-IV service (or Group 'C' and Group 'D' service); and (ii) if a payment has been made for a period in excess of five years, before the order date of recovery.

11. It is also relevant to state that the Government of Tamil Nadu has passed a G.O., relating to recovery of wrongful/excess payments made to the Employees / Pensioners etc., in G.O.Ms.No.286 Finance (Pension) Department, dated 28.08.2018, in tune with ***Rafiq Masih (White Washer)*** case.

12. In the light of the judgment of the Hon'ble Supreme Court cited supra, the impugned order cannot be sustained. Accordingly, the writ petition is allowed and the impugned order of the second respondent dated 23.12.2022 in Na.Ka.No.12875/AA1/2022, is hereby quashed. No costs. Consequently, connected miscellaneous petition is closed.

01.12.2025

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

1. The Director,
   Tamilnadu Fire Service,
   No.17, Rukmani Lakshmipathi Road,
   Egmore, Chennai – 600 008.

2. The District Fire Service Officer,
   Erode, Erode District.

P.T. ASHA, J,

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W.P.No.482 of 2023

01.12.2025

(½)

W.M.P.No.431 of 2023

in
W.P.No.482 of 2023

P.T.ASHA.J

_____Ordered subject to payment of single Court fee.

01.12.2025
(2/2)

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