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W.P.No. 3526 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No. 3526 of 2024

and

W.M.P.No.3786 of 2024

S.Selvakumar

... Petitioner

Vs.

1.The Director of Fire Service,
Tamil Nadu Fire Service,
No.17, Rukmani Lakshmipathy Road,
Egmore, Chennai – 8.

2.The District of Fire Service Officer,
Fire and Rescue Service,
Cuddalore District.

....Respondents

Prayer in WP.No.3231 of 2024 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in Muu.Mu.No.6394/A1/2020, Pa.Aa.No.10/2024 and dated 23.01.2024 to recover the increment for Grade II-B, Rs.94,990, Grade III- Rs.93,390 and for rented resident employees of Rs.90,190/- as 24 instalment from the petitioner's salary and quash the same as illegal and arbitrary.



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For Petitioners : Mr.K.Srinivasan

For Respondents : Mr.K.Surendran
Additional Government Pleader

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ORDER

This writ petition has been filed to quash the order in Moo.Mu.No.6394/AA1/2020, Pa.AA.No.10/2024 dated 23.01.2024 on the file of the second respondent.

2.Heard, learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

3.The petitioner was appointed as Firemen on 01.12.2002 and he has been promoted as Upgraded Leading Firemen on 01.12.2017. He was given incentive increment vide G.O.Ms.No.777, Home (Police~XVII) Department. Thereafter, by proceedings dated 13.01.2022, the Department has ordered to revise the pay scale stating that the pay fixation along with the increment has been wrongly fixed for the period from 01.12.2017 and accordingly, the salary of the petitioner was revised and refixed.



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4. However, now the order dated 23.01.2024 has been issued for recovering the excess amount drawn by the petitioner. At the time when the pay was re~fixed, the petitioner was not given with any proceedings for recovery. Now, after several years, the present order has been issued for recovery without putting the petitioner on notice. Challenging the same, the petitioner is before this Court.

5. The Hon-ble Supreme Court in the case of *State of Punjab and others vs. Rafiq Masih (White Washer)* reported in *AIR 2015 SC 696* had held that recovery of excess payment wrongly made by the Department to Group~C and Group~D employees is impermissible in law. In similar circumstances, this Court in *W.P.No.1122 of 2020 and batch dated 23.11.2023 [M.Santha vs. The Joint Director (Employment), O/o.Director of Employment and Training, Guindy, Chennai ~ 600 032 and batch]*, by invoking ‘White Washer’ case, has observed thus.

“15.Mr.J.Pooventhera Rajan, learned counsel for the petitioner cited the decision rendered in “White Washers” case to canvas his point that the stipulation made in White Washers case is applicable to the petitioners and even for the sake of



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argument, if the payment made to the petitioners are considered excess, it cannot be recovered. In paragraph 12 of the White Washers case the following summary has been given:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

(ii) Recovery from retired employees, or employees who are due to retired within one year, of the order of recovery.

(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.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.



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(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer-s right to recover.”

16.No doubt, the Petitioner who are working as Junior Assistants would fall under Class IV employees and some of them had retired from service and the recovery is sought to be made after five years. So the conditions (i) to (iii) are squarely applicable to facts of the case. However, in the case on hand, it is not excess payment but the payment due to be paid to the Petitioners, and hence it cannot even be considered as excess payment and hence no need to give the concession.

17.Because there is a conceivable difference between concession and entitlement. The -entitlement- represents a right which can be exercised or claimed and the concession is a relaxation or liberty given by someone at his discretion, and hence the receiver cannot have any control or claim over concession. What is being enjoyed by the Petitioners are only entitlement derived from G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012. Hence the impugned order issued for recovery of the payment already made and to stop making further payment is due to misinterpretation and misunderstanding of the scope



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of the above Government Order.

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18. In view of the above stated reasons, the impugned orders in the respect Writ Petitions are set aside and these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.”

6. In the case on hand, the petitioner was appointed as Firemen and therefore, they come under Group ‘C’ employees. Further, the recovery is sought to be made after several years. In such circumstances, the ‘**White Washer**’ case cited above is squarely applicable to the facts of the present case. Since the recovery is impermissible in law as per the decision cited supra, the recovery is set aside.

7. In view of the same, the Writ Petition is allowed and the impugned order of the second respondent is quashed. No costs. Consequently, connected miscellaneous petition is closed.

02.12.2025

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
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M.DHANDAPANI, J.

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