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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.02.2025**

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

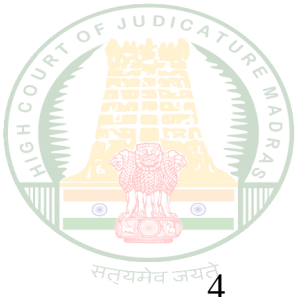
W.P.No. 3597 of 2024

A.Kanagaraj

... Petitioner

..Vs..

1. The State of Tamil Nadu
Represented by its Additional
Chief Secretary to the Government
Home (Police) Department,
Fort St. Groege
Chennai – 600 009.
2. The Director General of Police (L&O)
(Head of Police Force)
Office of the Director General of Police
Mylapore,
Chennai – 600 004.
3. The Commissioner of Police
Chennai City Police, Vepery,
Chennai – 600 007.



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4. The Deputy Commissioner of Police
Administrative Officer
Headquarters
Greater Chennai Police
Chennai.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order issued by the fourth respondent in proceedings Na.Ka.No.Sa.F.Section 2(1)/53316/2022 Ch.G.C.PO. Order No. 2899/2022 dated 3.11.2022 and quash the same and to consequently direct the respondents 1 to 4(i) to restore the pay of the petitioner and to accordingly refix his last drawn pay, (ii) to repay to the petitioner the recovered amount of Rs.1,85,165/-.

For Petitioner :: Mr.V.Lakshminarayanan

For Respondents :: Mr. M.Shahjahan
Special Government Pleader

ORDER

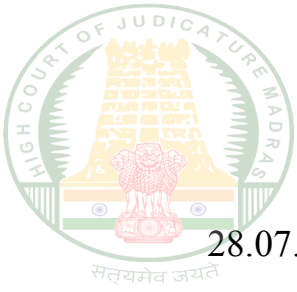
The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking interference with an order of the fourth respondent dated 03.11.2022 and quash the same. The petitioner seeks that the



respondent should restore the pay of the petitioner and refix his last drawn pay and to repay the amount which had been recovered namely a sum of Rs.1,85,165/-.

2. In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner had been initially appointed as Grade-II Police Constable in the Tamil Nadu Police Department on 17.01.1986. The petitioner was subsequently promoted as Grade-I Police Constable and later as Sub Inspector of Police. It had been stated that the petitioner retired on attaining the age of super superannuation on 30.06.2022. It had been contended that after retirement, the impugned order came to be passed seeking recovery of a sum of Rs.1,85,165/-. Claiming that the said recovery pertained to a period prior to five years and that, the petitioner was employed in Grade-C service and said recovery is impermissible in law, the Writ Petition has been filed challenging the said order.

3. A counter affidavit had been filed wherein it had been stated that the pay of the petitioner had been wrongly fixed on a misrepresentation of the Government letter D.No. 769, Home (Police-V) Department, dated



28.07.2010 and the upgradation as a Grade-I Police Constable and as Head Constable had been advanced. It had been stated that therefore, the petitioner drew higher salary than he was entitled to.

4. Heard the learned counsel for the petitioner and also the learned Special Government Pleader.

5. It is trite in law to point out that the Hon'ble Supreme Court had laid down in *State of Punjab and other Vs. Rafiq Masih (White Washer) etc.*, reported in **2015 4 SCC 334** that any recovery from Grade -C /Grade-D personnel to pay after a period of five years would cause substantial financial difficulty and therefore, the same should not be normally resorted to, unless the higher pay had been result of a misrepresentation made by the individual himself. It had also been held by the Hon'ble Supreme Court that such recovery should not be effected to without issuing a show cause notice. But primarily, the concept of recovery of pay with respect to refixation of the pay prior to five years had been frowned upon by the Hon'ble Supreme Court. It has been held as follows:-



“18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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

(iii) Recovery from the 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



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should have rightfully been required to work against an inferior post.

(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.”

6. In view of the pronouncement made by the Hon'ble Supreme Court which had also been consistently followed by the learned Single Judge of this Court, the Writ Petition stands allowed. The impugned order is set aside. No order as to costs.

7. A direction is given to the respondents to repay the amount recovered, namely, Rs.1,85,165/- within a period of six weeks from the date of receipt of a copy of this order since it had been wrongly withheld that the petitioner would also be entitled for interest at 6% p.a.

20.02.2025

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order



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- To
1. Additional Chief Secretary
The State of Tamil Nadu
The Government Home (Police) Department,
Fort St. George
Chennai – 600 009.
 2. The Director General of Police (L&O)
(Head of Police Force)
Office of the Director General of Police
Mylapore,
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 3. The Commissioner of Police
Chennai City Police, Vepery,
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C.V.KARTHIKEYAN, J.,

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