



W.P.No.4159 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2025

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4159 of 2024
and W.M.P.No.4465 of 2024

- 1.V.Venkatesan (died)
- 2.Rani Venkatesan
- 3.Vinoth Venkatesh
- 4.Sathish Venkatesh

*[Petitioners 2 to 4 substituted as legal heirs of the
1st petitioner vide order dated 11.12.2025 in
W.M.P.No.4465 of 2024 in W.P.No.4159 of 2024]*

... Petitioners

Vs

1.The Commissioner,
Greater Chennai Corporation,
Chennai.

2.The Assistant Commissioner,
Public administration and works,
Greater Chennai Corporation,
Chennai.

3.The Superintend Engineer,
(mechanical)
Greater Chennai Corporation,
Chennai.

... Respondents



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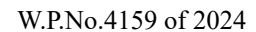
Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 2nd respondent's proceedings vide G.D.C.No.P12/011748/2023 dated 05.07.2023 is illegal and quash the same.

For Petitioners : Mr.K.Rajendra Prasad
For Respondents : Ms.S.Vanitha Joice Rani

ORDER

Aggrieved by the order of recovery dated 05.07.2023 passed by the 2nd respondent, the petitioner is before this Court.

2. It is the case of the petitioner that he joined the Corporation of Chennai as a Welder on 03.06.1994 and was retired from service upon attaining superannuation on 30.06.2022. Subsequent to his retirement, the present impugned order was passed sanctioning a sum of Rs.10,52,651/- towards payment of provisional/retirement gratuity after reducing a sum of Rs.1,32,653/- on the ground of excess payment. It is further stated that though the sanctioned pension was fixed at Rs.24,350/-, the same was reduced to Rs.16,234/-. Aggrieved by the said order, the present Writ Petition has been filed.



5. Heard the learned Counsel appearing on either side and perused the materials available on record.



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6. The issue that arises for consideration in the present Writ Petition is no longer *res integra*, as the similar issue has already been considered by the Hon'ble Apex Court in case of ***State of Punjab and Others Vs. Rafiq Masih (While Washer)*** reported in ***SCC OnLine SC 1027***. The relevant portion of the said Judgement is extracted hereunder, wherein, it is held as under:-

“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 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.

7. From the aforesaid decision, it is explicitly clear that, no recovery can be made against the employees belonging to Class III and Class IV category and that such recovery cannot be effected long after the date of excess payment. In the present case, the petitioner is a retired employee belonging to non-gazetted cadre who retired from service on 30.06.2022. The alleged excess payment pertains to much prior period i.e., more than a period of five years to the order of recovery

8. Applying the dicta laid down in the aforesaid case, recovery cannot be made from the petitioner moreso when it was not on account of any misrepresentation or claim made by the petitioner. Therefore, the impugned order of recovery cannot be sustained and the same is liable to be set aside.

9. In the light of the above, the Writ Petition is allowed and the impugned order of recovery is hereby set aside. The respondents are directed to pay the entire amount including the recovered amount totalling to a sum of Rs.11,85,304/- to the petitioner within a period a four (4) weeks from the date of receipt of a copy of this order. Failing which, the respondents are directed to pay interest at the rate of 6% per



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annum till the date of payment. However, liberty is granted to the respondents to conduct an enquiry after issuing due notice to the petitioner. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

11.12.2025
(2/2)

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

Nhs

To

- 1.The Commissioner,
Greater Chennai Corporation,
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- 2.The Assistant Commissioner,
Public administration and works,
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M.DHANDAPANI, J.

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