



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-03-2025

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THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

WP No. 6417 of 2025

and

W.M.P. No. 7038 of 2025

V.Nagarajan
S/o.Venugopal, Sub Inspector Of
Police(retired) S.I.No.34204, No.84, 1st
Cross Street, Duraiswamy Naidu Main
Road, Rajiv Nagar, Thiruverkadu,
Chennai-600 077

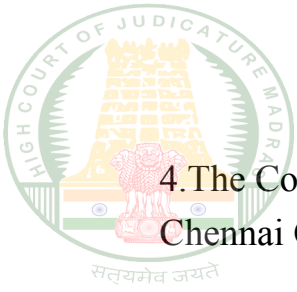
Petitioner

Vs

1. The State Of Tamilnadu
Rep By Its Additional Chief Secretary To
The Government Home (police)department,
Fort St.George, Chennai-600 009

2.The Principal Accountant General(A&E)
Tamilnadu Teynampet, Chennai-18

3.The Director General Of Police
(L & O)
(head Of Police Force), Office Of The
Director General Of Police, Mylapore,
Chennai-600 004



4. The Commissioner Of Police
Chennai City, Vepery, Chennai-7

5. The Deputy Commissioner Of Police
Headquarters, Greater Chennai Police.
Chennai

Respondents

PRAYER

to call for the records in pursuant to the impugned orders issued by the 5th respondent in proceedings RC.No.Tr/Payfix/449/13112/2024, T.Z.O.No.643/2024 dated 03.09.2024 and quash the same and to consequently direct the respondents 1 to 5 (i) to restore the pay of the petitioner and to accordingly re-fix his last drawn pay (ii) to re-fix his pension and pay the arrears of pension and (iii) to repay to the petitioner the recovered amount of Rs.2,62,435/-

For Petitioner: Mr.V.Lakshmi Narayanan

For Respondents: M/s.M.Shahjahan
SGP – RR1,3,4,5
Mr.T.Ravikumar - R2

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking interference with an order of the fifth respondent dated 03.09.2024 and quash the same. The petitioner seeks that the respondents should restore the pay of the petitioner and re-fix his last drawn pay and to repay the amount which had been recovered.



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. The petitioner was subsequently promoted as Grade-I Police Constable and later as Special Sub Inspector of Police. It had been stated that the petitioner retired on attaining the age of superannuation. It had been contended that after retirement, the impugned order came to be passed seeking recovery of alleged excess amount paid. 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.

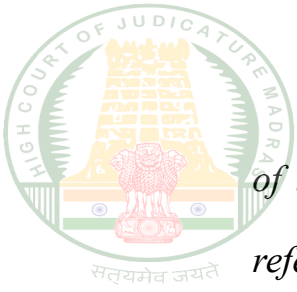


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4. Heard the learned counsel for the petitioner and also the learned Special Government Pleader.

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 re-fixation 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



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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.*
- (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 learned Single Judges 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 within a period of six weeks from the date of receipt of a copy of this order and since it had been wrongly withheld, the petitioner would also be entitled for interest at 6% p.a. till date of repayment.

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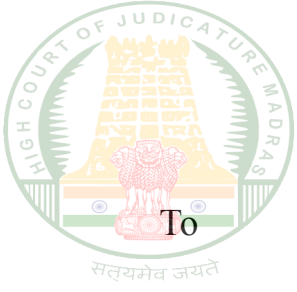
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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C.V.KARTHIKEYAN J.

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