



W.P.No.17085 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2025

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THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.17085 of 2025
and
W.M.P.No.19371 of 2025

S.Sankar

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Represented by its Additional Chief
Secretary to the Government,
Home (Police) Department,
Fort St.George,
Chennai – 600009.
2. The Principal Accountant General (A&E),
Tamil Nadu,
Tenampet,
Chennai.
3. The Director General of Police (L&O),
(Head of Police Force)
Office of the Director General of Police,
Mylapore,
Chennai – 600004.
4. The Deputy Director,
Tamil Nadu Police Academy,
Chennai – 127.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order issued by the fourth respondent in proceeding Na.Ka.No.B1/E-7441133/2024 TA.NA.KA.U.Order No.326/2024 dated 26.11.2024 and quash the same and to consequently direct the first to fourth respondents (I) to restore the pay of the petitioner on par with his batch mate K.Suresh Babu PPO R0535956 and to accordingly refix his last drawn pay, (ii) to refix his pension and pay the arrears of pension and (iii) to repay the petitioner the recovered amount of Rs.2,94,159/-.

For Petitioner : Mr.V.Lakshmi Narayanan
For Respondents : Mr.R.U.Dinesh Raj Kumar,
Additional Government Pleader
(for R1, R3 & R4)
Mr.V.Vijayshankar,
Standing Counsel (for R2)

ORDER

The instant writ petition has been filed challenging the impugned order dated 26.11.2024 passed by the fourth respondent.

2. The learned counsel for the petitioner would submit that the



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petitioner retired from service on 20.02.1986, and the impugned order of recovery was passed subsequent to the retirement, viz., 26.11.2024, and the alleged excess pay was made with effect from 22.07.2002. He would further contend that the petitioner is a Group C employee. Therefore, this case squarely falls under the judgement of the Hon'ble Supreme Court of India in ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others***, reported in ***[(2015) 4 SCC 334]***. Though the learned counsel for the petitioner seriously objects to the recovery, on instructions from his client, he has submitted that he has no objection in respect of re-fixation.

3. Per contra, the learned Additional Government Pleader appearing for the first, third and fourth respondents would vehemently contend that the pay was fixed only upon the representation of the petitioner that there was a pay anomaly on the ground that his junior was getting higher pay. Only upon his request, the pay was re-fixed, and at the time of re-fixation, the petitioner has agreed to refund if any excess was detected in a future point of time, When the petitioner himself has given an undertaking, there cannot be any grievance for him to challenge the impugned order. Apart from that, it is the contention of the learned Additional Government Pleader that the petitioner is



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a Group-B Officer. Therefore, the judgement of the Hon'ble Supreme Court of India in ***Rafiq Masih (White Washer)'s*** (cited supra) is not applicable in the present case.

4. I have given my anxious consideration to either side submissions.

5. It is an admitted fact that the impugned order dated 26.11.2024, was passed subsequent to the retirement of the petitioner, and it is further admitted that the amount alleged to have been paid in excess commenced in the year 2002, which is beyond the period of five years. Though the learned counsel for the respondents would strongly object to this Writ Petition, it is not their case that the excess payment was made due to the misrepresentation by the petitioner.

6. In such view of the submission, as rightly contended by the learned counsel for the petitioner, the facts of this case is squarely covered by the Judgment of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** reported in ***[(2015) 4 SCC 334]***. The relevant paragraph is paragraph 18, which reads as follows:-



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“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.*
- (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.*



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7. As already observed, if any recovery is ordered after the retirement of the employee, that too for payments that have been made since 2002 would definitely cause great hardship to the petitioner and also impinge upon his right to life. Hence, this Court is of the firm view that the impugned orders are liable to be quashed.

8. In view of the matter, the impugned order dated 26.11.2024, is hereby quashed to the extent of recovery. However, the re-fixation made by the respondents is confirmed. It is made clear that if the recovery amount has already been recovered by the respondents, the respondents are directed to repay the same without interest within a period of three months from the date of receipt of a copy of this order.



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9. In the result, this Writ Petition is partly allowed as indicated above.

Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No

To

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C.KUMARAPPAN, J.

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