IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2025

CORAM:

THE HONOURABLE MRS. JUSTICE **N.MALA**

W.P.No.16251 of 2022
and WMP.Nos.15598 & 15600 of 2022

G.Philip Ponnusamy ... Petitioner

Vs

1. State Bank of India
Rep.by its Chief General Manager
Circle Top House
College Road
Nungambakkam,
Chennai 600 006.

2. The Deputy General Manager (B&O)
State Bank of India
Chennai South, 5th floor,
No.86, Rajaji Salai,
Chennai 600 001

3. The Regional Manager
Regional Business Office
Chennai IT Corridor
State Bank of India
No.A14, Rathna Arcade 2nd floor,
Thiru.Vi.Ka Estate,
SIDCO Industrial Estate

Guindy, Chennai 600 032.

4. Manager – HR
RBO Chennai IT Corridor
State Bank of India
No.A14, Rathna Arcade 2nd floor
Thiru.Vi.Ka Estate, SIDCO Industrial Estate,
Guindy, Chennai 600 032.

5. The Chief Manager
State Bank of India
IIT Madras Branch
IIT Campus
Chennai 600 036. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus to call for the concerned records from the 3rd and 4th respondent and to quash the order jointly issued by the 3rd and 4th revising the fitment of the petitioner on appointment in subordinate cadre (for ex-serviceman employees) dated 04.05.2022 and the order of the 3rd respondent dated 20.06.2022 bearing No.RM/ITC/12/2022-23/503 and as illegal, arbitrary and contrary to law and consequently direct the respondents to restore the fitment made prior to the revised fitment and further direct the respondents not to make any recovery from the terminal benefits of the petitioner or from the salary of the petitioner and calculate the terminal benefits of the petitioner on the basis of his basic pay and other allowances paid prior to the revised fitment and pay all the terminal benefits of the petitioner on that basis.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.G.Anand Gopalan
for T.S.Gopalan & Co., for R3

O R D E R

This writ petition has been filed for issuance of a writ of certiorarified mandamus to call for the concerned records from the 3rd and 4th respondent and to quash the order jointly issued by the 3rd and 4th revising the fitment of the petitioner on appointment in subordinate cadre (for ex-serviceman employees) dated 04.05.2022 and the order of the 3rd respondent dated 20.06.2022, bearing No.RM/ITC/12/2022-23/503 as illegal, arbitrary and contrary to law and consequently direct the respondents to restore the fitment made prior to the revised fitment and further direct the respondents not to make any recovery from the terminal benefits of the petitioner or from the salary of the petitioner and calculate the terminal benefits of the petitioner on the basis of his basic pay and other allowances paid prior to the revised fitment and pay all the terminal benefits of the petitioner on that basis.

2. The petitioner joined the Indian Airforce on 09.01.1981 as Airmen and after completing 20 years of service was discharged on 31.01.2001. Thereafter, he joined the services of the respondent Bank as Assistant on 20.01.2009. The pay of the petitioner was fixed by protecting his last drawn basic pay in the Indian Air Force. The pay was fixed in the VIII Bipartite Settlement of the respondent Bank and the benefit of subsequent Bipartite Settlement was extended to the petitioner. While so, when the petitioner was about to retire on 30.06.2022, the respondent Bank refixed the pay of the petitioner with effect from 04.05.2022, by reducing the same and recovery of the excess payment was sought to be made. Hence, the petitioner filed the writ petition for the aforesaid relief.

3. The respondents filed counter denying all the contentions raised by the petitioner in the affidavit. The respondents stated that the petitioner was appointed on 20.01.2009, and on the date of appointment, it was the

8th bi-partite settlement dated 01.11.2002 which was in force. The 9th bi-partite settlement which was due in the year 2007, should have taken place on 01.11.2007, however it was signed only on 27.04.2010. Due to the delay in execution of the 9th bi-partite settlement, in the revision, instead of fixing the petitioner's pay at Rs.7,400/- it was erroneously fixed at Rs.8,900/-. Therefore the petitioner continued to erroneously receive additional payments to the tune of Rs.6,79,567.33/- over the years. As the amounts were paid erroneously the same were sought to be recovered while settling the terminal benefits of the petitioner.

4. As regards the revised fitment of the petitioner's pay from 04.05.2022 was concerned, it was submitted that as the fitment of the petitioner's pay was subsequently revised by the 9th bi-partite agreement erroneously applying it retrospectively, the same was rectified at the time of his superannuation. The respondents stated that there were no merits in the writ petition and the same was liable to be dismissed.

5. The learned counsel for the petitioner submitted that the

impugned order was passed without prior intimation to the petitioner and a sum of Rs.6,79,567.33/- was sought to be recovered, illegally and arbitrarily towards excess payments made from the date of the petitioner's appointment on 20.01.2009. The learned counsel submitted that absolutely no prior intimation was given to the petitioner before seeking to recover the said amount and even the refixation of pay was not informed to the petitioner.

6. In support of his contention the learned counsel relied on the judgment of the Hon'ble Supreme Court reported in 2024 SCC online SC 1909 and 2015(4) SCC 3334 and prayed that the writ petition be allowed.

7. The learned counsel for the respondents fairly conceded that recovery is not possible in view of the law laid down by the Apex Court in Rafiq Masih's case. The counsel submitted that in so far as refixation is concerned, the respondents should be permitted to pass fresh orders, after providing due notice and opportunity to the petitioner.

8. Heard both sides and perused the materials available on record.

9. With regard to recovery useful reference can be made to judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer)*** and others reported in (2015) 4 SCC 3334. The Hon'ble Supreme Court summarised the principles on recovery as follows:-

" (i) Recovery from the employees belonging to Class III to 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".

In my view clauses (iii) & (v) squarely apply to the petitioner's case in as much as payments made in excess of 5 years were sought to be recovered. Moreover, the recovery of a sum of Rs.6,79,567.33, from the petitioner's terminal benefits will result in great hardship to the petitioner. In my view, the balance lies in favour of the petitioner as the loss caused to him far outweighs the right of the respondents to recover. Hence the order dated 20.06.2022, seeking to recover of a sum of Rs.6,79,567.33/- from the petitioner's terminal benefits is held to be illegal and unsustainable.

10. From the materials placed before me, it is clear that the petitioner was not put on notice, before refixing his pay.

11. The Hon'ble Supreme Court in 2024 SCC online SC 1909 in the case of ***Jagdish Prasad Singh Vs State of Bihar and others,*** held as follows:-

> ***"26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as***

well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence the same cannot be sustained".

In view of the above judgment and under the facts and circumstances of the case, I am of the view that the re-fixation of pay made without notice to the petitioner is not only violative of the principles of natural justice but also results in drastic civil as well as evil consequences and hence the same cannot be sustained. As the petitioner retired from service 3 years ago, I am of the view that permitting refixation at this stage will only prolong his mental agony. Hence, I am not inclined to permit the respondents to conduct the exercise of refixation of pay, as in my view, it would be unfair and inequitable to the petitioner.

12. In the light of the above discussions, the impugned orders cannot be sustained and hence are set aside. A direction is issued to the

respondents to restore the pay scale of the petitioner and consequently restore the fitment made prior to the revised fitment and calculate the terminal benefits of the petitioner on the basis of his basic pay and other allowances paid prior to the revised fitment and pay all the terminal benefits to the petitioner on the said basis, within a period of 12 weeks from the date of receipt of a copy of this order.

13. Accordingly, the writ petition is allowed. Consequently, connected miscellaneous petitions are also closed.

08.04.2025

dpq (2/2)
Index: Yes/No
Speaking order / Non speaking order

To

1. State Bank of India
   Rep.by its Chief General Manager
   Circle Top House
   College Road
   Nungambakkam,
   Chennai 600 006.

2. The Deputy General Manager (B&O)
   State Bank of India
   Chennai South, 5th floor,
   No.86, Rajaji Salai,
   Chennai 600 001

N. MALA, J.

dpq

3. The Regional Manager
   Regional Business Office
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   No.A14, Rathna Arcade 2nd floor,
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