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W.P No.18041 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2025

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THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Writ Petition No.18041 of 2025

and

Writ Miscellaneous Petition No.20226 of 2025

D.J.Wilson Jebadas

... Petitioner

..Vs..

1.The Commissioner of Police,
O/o. The Commissioner of Police,
No.132, EVK Sampath Road,
Vepery, Chennai-600 007.

2.The Deputy Commissioner of Police,
Head Quarters,
Vepery, Chennai-600 007.

... 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 records of proceedings of the second respondent in Na.Ka.19939 Pay-Fix-1(1)/2003/Se.Pay.Ka.No.3180/2023 dated 30.07.2023 and quash the same with the consequential direction directing the respondents revise and refix the petitioner's pay at Rs.62,700/- and to refund the recovered amount of Rs.1,37,856/- with interest at the rate of 6% to the petitioner.

For Petitioner : Mr.V.Ravikumar

For Respondents : Mr.R.U.Dinesh Raj Kumar,
Additional Government Pleader



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ORDER

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The instant writ petition has been filed challenging the proceedings in Na.Ka.19939 Pay-Fix-1(1)/2003/Se.Pay.Ka.No.3180/2023 dated 30.07.2023 passed by the second respondent.

2. The learned counsel appearing on behalf of the petitioner would submit that the petitioner after serving about 37 years, retired from service on 30.06.2023. He would further submit that after his retirement, on 30.07.2023, the respondent had issued a recovery order and deducted a sum of Rs.1,37,856/- from the retirement benefits of the petitioner.

3. It is the submission of the learned counsel for the petitioner that such recovery was effected after his retirement for the alleged excess payment beyond the entitlement of the petitioner since 2017. Therefore, it is the submission of the petitioner that the case is squarely covered by the decision of Honourable Supreme Court in the case of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others [(2015) 4 SCC 334]*** and prayed to quash the recovery order.



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4. Per contra, the learned Special Government Pleader appearing on behalf of the respondents would strongly object the contention of the petitioner and would contend that the excess pay was made only based upon the representation of the petitioner, on the ground that his junior was receiving higher pay and the petitioner wanted to correct the pay anomaly. Since the step up of pay was made on the basis of the representation of the petitioner, he is bound to refund the same, according to his undertaking. Apart from that, the learned Special Government Pleader would submit that the instant case is not covered by the decision of the Hon'ble Supreme Court held in ***Rafiq Masih (White Washer)'s*** case. On the other hand, subsequent judgment of the Hon'ble Supreme Court in ***High Court of Punjab & Haryana and Others vs Jagdev Singh (AIR 2016 SC 3523)*** make it clear that when there is any undertaking given by the employee to refund the payment which had been received by them in excess of their entitlement then, they are bound to refund the same. Therefore, the petitioner cannot raise any grounds challenging the the impugned order, dated 30.07.2023.

5. I have given my anxious consideration on either side submissions.



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6. The main submission of the learned Special Government Pleader is that the decision in the case of **Rafiq Masih (White Washer)** is not applicable to the present case and the applicable precedent is the principle laid down in the case of **Jagdev Singh's** cited supra. Though the Hon'ble Supreme Court has held in para 11 of the **Jagdev Singh's** case, the principle enunciated in proposition (ii) cannot be applied in a situation, where the employee has given an undertaking to refund if any excess amount is received. But while looking to the factual aspect of the case pointed out in **Jagdev Singh's** case is that, the employee was placed under suspension and subsequently, punishment of compulsory retirement was ordered. Only in that context the Hon'ble Supreme Court has passed such an order. Therefore, this Court is of the firm view that the principle enunciated under the **Jagdev Singh's** case is not applicable to the present facts of this case.

7. Coming back to the submission of the learned counsel for the petitioner that, as he rightly contended that the recovery order was passed subsequent to the retirement and the alleged excess amount was paid to the



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petitioner admittedly not on the misrepresentation of the petitioner. Even, while looking at the impugned order, the recovery amount was calculated by taking into consideration of the excess payment made since 2017, therefore, this Court is of the firm view that the facts of this case squarely comes within the ratio laid down by the Hon'ble Supreme Court in the case of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others [(2015) 4 SCC 334]***. For ready reference, this Court deems it appropriate to extract the relevant portion in para 18 of the Judgment.

“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 herein above, 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.



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(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.”*

8. In view of the above Judgment, this Court is of the firm view that the recovery order passed against the petitioner is in contravention to the ratio laid down by the Hon'ble Supreme Court in **Rafiq Masih (White Washer)'s** case. Hence the impugned proceedings dated 30.07.2023 is liable to be quashed.

9. The learned counsel for the petitioner would submit that the respondents had already recovered certain amount from the petitioner.



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Therefore, the respondents are directed to refund the recovered amount, without any interest, within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. In the result, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

19.06.2025

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Index : Yes

Speaking Order : Yes

Neutral Citation Case: Yes/No

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C. KUMARAPPAN, J.

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