

W.P.No.22060 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on	06.03.2025
Pronounced on	18.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.22060 of 2014

and

M.P.No.1 of 2014

S.Kalameham,
S/o.Swamikkannu

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Micro, Small and Medium Enterprises Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner and Director of Industries
and Commerce,
36, South Canal Bank Road,
Manthavelipakkam,
Chennai – 600 028.

3.The Assistant Director,
Data Bank and Information Centre for Electrical
and Electronic Industries,
VSI Industrial Estate,
Thiruvanmiyur,
Chennai – 600 041.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for



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issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in R.C.No.24198/EDS.2/2013 the impugned order dated on 03.04.2014 and quash the same and further give the direction to directing the 2nd respondent to pay the recovered amount to the petitioner with accrued interest and pending arrears of the increment from 2002-2004 and within the stipulated period of time.

For Petitioner : Mr.R.Subramanian

For Respondents :

For R1 : Mr.G.Nanmaran
Special Government Pleader

For R2 and R3 : No appearance

ORDER

In this Writ Petition, the Petitioner has challenged the Order dated **03.04.2014** bearing **R.C.No.24198/EDS.2/2013** of the 2nd Respondent/the Commissioner and Director of Industries and Commerce, Chennai. The Petitioner has further sought for direction to the 2nd Respondent to pay the amount recovered from the Petitioner with accrued interest and pending arrears of the increment from 2002-2004.

2. The facts of the case are that the Petitioner was relieved from service



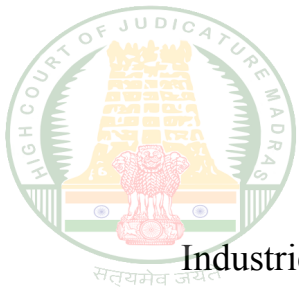
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with effect from **31.03.2008**. At the time of being relieved from service, the Petitioner was serving as a **Librarian Grade I** at the **Data Bank and Information Centre for Electrical and Electronic Industries, Chennai – 41**.

3. Facts on record reveal that it was made clear that the Petitioner will be relieved from service on **31.03.2008** afternoon and a sum of **Rs.1,04,632/-** will be recovered from the Petitioner's Death-cum-DCRG amount vide **C&DIC Proc.No.38672/EDS2/2006** dated **08.01.2007** and **A.D(E&E), D.B.Ch 41 Proc.No.1650/DB1/05-11** dated **31.12.2007**. The Petitioner has not challenged the aforesaid orders.

4. It is the specific case of the Petitioner that while settling the terminal benefits, the Respondents have given effect to the aforesaid decision by their communication dated **12.02.2009** in their proceeding bearing **Reference No.34/DB1/2008**, whereby, out of the DCRG amount of **Rs.3,04,722/-**, a sum of **Rs.1,04,637/-** was recovered from the Petitioner by the Respondents based on the aforesaid proceedings.

5. The further case of the Petitioner is that the Government had decided to accept the proposal of the Industries Commissioner and Director of



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Industries and Commerce, Chepauk, Chennai to regularize the service of the Petitioner who was formerly, a **Selection Grade Skilled Worker Grade I** in the post of **Librarian, Grade I** under the latter part of **Rule 16(b)** of the **Tamil Nadu Public Service Commission Regulations** under the method of Appointment by Transfer from the date of his initial appointment i.e., from **05.06.1996** forenoon by relaxing **Rule 2** of the **Special Rules for Tamil Nadu Industries Subordinate Service**.

6. However, the regularization of the service of the Petitioner has been given a notional effect for fixation of pay from the date of appointment and monetary benefits from the date of issuance of the aforesaid Order of regularization vide Government Order in **G.O.(4D)No.6, Small Industries (EI.2) Department**, dated **28.02.2005**.

7. The issue in dispute is covered in favour of the Petitioner and against the Respondent by the decision of the Hon'ble Supreme Court in **State of Punjab and others Vs Rafiq masih (White Washer) and others**, 2015 (4) SCC 334. In **Paragraph No.18** of the aforesaid decision, the Hon'ble Supreme Court held as under:-



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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,



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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.”

(emphasis supplied)

8. This view has been followed by the Hon'ble Supreme Court in several cases. Recently, it was also followed by the Hon'ble Supreme Court in **Thomas Daniel Vs. State of Kerala and others in Civil Appeal No.7115 of 2010** on **02.05.2022**.

9. In accordance with the aforesaid decision of the Hon'ble Supreme Court, the Impugned Order dated **03.04.2014** of the 2nd Respondent recovering the amount paid in excess to the Petitioner while serving in the post of **Librarian Grade I** at the **Data Bank and Information Centre for Electrical and Electronic Industries, Chennai – 41** with effect from **05.06.1996** at the time of relieving the Petitioner from service is liable to be quashed and is accordingly quashed.

10. Therefore, this Writ Petition deserves to be allowed. Accordingly, it is allowed. No costs. Connected Miscellaneous Petition is closed.



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Neutral Citation: Yes / No

jas / arb

To:

- 1.The Secretary,
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Micro, Small and Medium Enterprises Department,
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner and Director of Industries
and Commerce,
36, South Canal Bank Road,
Manthavelipakkam,
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- 3.The Assistant Director,
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C.SARAVANAN, J.

jas / arb



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Pre-delivery Order in
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