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W.A.No.1740 of 2025



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2025

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.SURENDER**

W.A.No.1740 of 2025

Pushparaj,
W/o.Late Kannan,
Formerly Maternity Assistant
(Multispeciality Health Worker, Supergrade),
Thirusuzhi Panchayat Union Dispensary
M.Reddipatti, Virudhunagar. ...

Appellant

versus

- 1.The Secretary to Government,
Rural Development & Panchayat
Raj Department,
Fort St.George, Chennai - 9.
- 2.The Secretary to Government,
Health & Family Welfare Department,
Fort St.George, Chennai - 9.
- 3.The Director of Rural Development
Panagal Building,
Saidapet, Chennai - 600 015.
4. The Director of Local Fund Audit,
Combined Accounts Office,
Anbalagan Maaligai, 4th Floor,
Nandanam,
Chennai - 600 035.

5.The Commissioner,

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Thirusuzhi Panchayat Union Office
M.Reddipatti,
Virudhunagar District.

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Respondents

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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed in W.P.No.6896 of 2024 dated 28.03.2025.

For Appellant : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.T.Chandrasekar
Special Government Pleader

J U D G M E N T

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

Challenge in the Writ Petition was to the order of the fifth respondent directing recovery of a sum of Rs.5,80,393/- which was wrongly paid to her as a result of wrong fixation of her pay.

2. We heard Mr.K.Venkataramani, learned Senior Counsel, instructed by Mr.M.Muthappan appearing for the appellant and Mr.T.Chandrasekar, learned Special Government Pleader appearing for the respondents.

3. The Writ Court had held that the re-fixation is correct as the salary of the appellant was wrongly fixed in the post of maternity assistant



even though the appellant was only auxiliary mid wife. As far as recovery is concerned the writ court after referring to the judgment of the Hon'ble Supreme Court in *State of Punjab Vs. Rafiq Masih* reported in (2015) 4 SCC 334 [*whitewasher's case*], wherein the Hon'ble Supreme Court had held that excess payment made owing to the wrong fixation of pay scale by the Department cannot be recovered from the pensioner and therefore the recovery is impressible in law held that the appellant cannot rely upon the said judgment as she had given an undertaking when her pension was fixed. We are unable to sustain the said conclusion of the writ court since it overlooks the bargaining power of a retired employee vis a vis the mighty employer namely the state. The fact that the recovery in the case on hand is due to the wrong fixation of the pay by the Department is not in dispute. Therefore, the order of recovery has to be set aside.

4. Law on the question of recovery is settled by the judgment of the Hon'ble Supreme Court in *White Washer's case*, referred to *supra*. The order of the recovery having been made after retirement, the same cannot be sustained. At the same time, the re-fixation of the pension cannot be questioned, inasmuch as it only rectifies the mistake committed.



5. Hence, the Writ Appeal is *partly allowed* and the order of recovery is set aside. It is made clear that the appellant would be entitled to pension as per the re-fixation done by the order dated 08.11.2010. No costs.

(R.S.M., J.) (K.S., J.)
17.06.2025

Speaking order

Index : No

Neutral Citation : No

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To

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