



W.P.No.21024 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2025

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THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.21024 of 2025

and

W.M.P.Nos.23758 and 23762 of 2025

A.Elango

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by Secretary to the Government,
School Education Department,
Fort St. George,
Chennai – 600 009.
2. The Secretary,
Government of Tamil Nadu,
Finance Department,
Fort St. George,
Chennai – 600 009.
3. The Director of School Education,
College Road, Chennai – 600 009.
4. The Chief Educational Officer,
Tirupur District, Tirupur.
5. The District Educational Officer (Secondary Education),
Tirupur District, Tirupur.



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6. The Branch Officer,
Office of Accountant General,
Teynampet,
Chennai – 600 018.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in relation to proceedings issued in P22/2/12230654/ADK/473 dated 20.01.2025 and in Na.Ka.No.7622/A1/2023 dated 28.03.2025 by the sixth and fifth respondents respectively, and quash the same and issue a consequential direction to the respondents to restore the proceedings issued in Na.Ka.No.0665/A1/2019 dated 22.05.2019 of the fourth respondent and restore the pay of the petitioner at Rs.13500 in the Selection Grade Scale of Pay of Rs.9300-34800 + 4200 GP w.e.f 01.01.2006 notionally with monetary benefits of 01.03.2011 with consequential benefits and to release all retirement benefits of the petitioner including monthly pension, with interest at 18% per annum.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mrs.S.Muthreye Chandru,
Special Government Pleader
(for R1 to R5)
Mr.P.Mano Rajan,
Standing Counsel (for R6)



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ORDER

This Writ Petition has been filed challenging the proceedings issued in P22/2/12230654/ADK/473 dated 20.01.2025 and in Na.Ka.No.7622/A1/2023 dated 28.03.2025 by the sixth and fifth respondents respectively.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as a Record Clerk on 10.10.1988 on compassionate grounds. Thereafter by order dated 30.06.1994, he was appointed as Laboratory Assistant in Arignar Anna Government Higher Secondary School, Vellakoil. On 17.07.2004, the petitioner was granted selection grade in the post of Laboratory Assistant. Further, by order dated 30.10.2006, he was transferred and posted as Junior Assistant in Government Higher Secondary School, Avalpandharai and subsequently transferred to Government High School Chinnakampatti by order dated 31.01.2007. It is the further submission of the petitioner that by order dated 29.03.2012, he was promoted as Assistant and posted to Government Higher Secondary School, Kulathupalayam. Thereafter, he retired from service on 29.02.2024 without receiving any retirement benefits.



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2.1. He would also submit that on the verge of retirement, the fifth respondent passed a recovery order on 28.03.2025, claiming a sum of Rs.21,69,281/- as the excess amount paid beyond the entitlement of the petitioner. It is the submission of the learned counsel for the petitioner that the above recovery is in contravention to the settled legal position of 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]***. Therefore, the learned counsel for the petitioner prayed to allow this writ petition.

3. Per contra, the learned Special Government Pleader appearing for the first to fifth respondents would vehemently submit that the recovery was effected based on the audit report and the petitioner's pay was wrongly fixed. Therefore, it is the duty of the petitioner to repay such excess pay which is beyond his entitlement. Therefore, there is no infirmity in the impugned order.



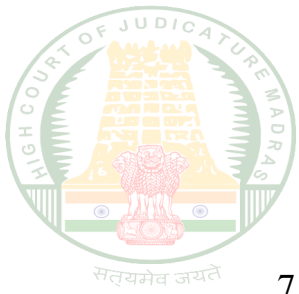
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4. I have given my anxious consideration to the submissions made on either side.

5. Admittedly, the petitioner retired on 29.02.2024, and the impugned order was passed on the verge of his retirement. While looking at the impugned order, the recovery was made for the excess pay given to the petitioner beyond his entitlement for the period from 01.06.2006 to 29.02.2024 admitted by the petitioner, he is a Group-C officer. It is not the case of the respondents that the excess pay was made due to misrepresentation or submission of false documents by the petitioner.

6. Further, from looking at the impugned order, the recovery was ordered to be effected for the payment that had been paid beyond five years from the date of impugned order. In such view of the matter, as per the ratio laid down in the judgement of the Hon'ble Supreme Court of India in ***Rafiq Masih (White Washer's) case*** cited supra, any recovery beyond the period of five years, that too against retire is liable to be quashed.



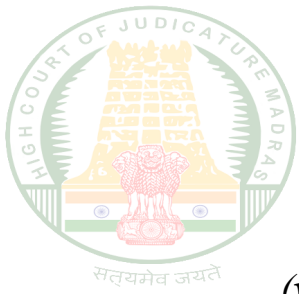
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7. In this connection, it would be useful to refer to the judgement of the Hon'ble Supreme Court of India in ***Rafiq Masih (White Washer's) case*** cited supra. The relevant paragraph is paragraph 18, which reads as follows:-

“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.*



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(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.

Therefore, as per the above ratio, this Court finds force in the submission made by the learned counsel for the petitioner. At the same time, the re-fixation made by the fifth respondent authority is liable to be confirmed as it comes within their expert domain.

8. In view of the above observations, this Court deems it appropriate to quash the impugned order with respect to the recovery alone. Accordingly, the impugned order dated 28.03.2025 is hereby quashed to the extent of recovery. However, the re-fixation made by the fifth respondent is confirmed. At this juncture, it is appropriate to direct that if any amount has already been recovered from the petitioner, the respondents are directed to refund 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 Petitions are closed. No costs.

17.06.2025

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Index : Yes/No

Speaking order

Neutral Citation : Yes/No

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Chennai – 600 009.
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C.KUMARAPPAN, J.

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