



W.P.Nos.25051 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2025

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.Nos.25051 of 2021
and WMP.Nos.26388, 26389 & 26391 of 2021

M. Chalapandian

... Petitioner

Vs

1. State Bank of India,
Rep.by its Regional Manager
No.9, Varadha Reddy Street,
Vadachala Nagar,
Near New Bus Stand,
Chengalpet 603 001.

2. State Bank of India,
Rep. by its Manager – HR,
No.9, Varadha Reddy Street,
Vadachala Nagar,
Near New Bus Stand,
Chengalpet 603 001.

...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 relating to the impugned revised fitment on appointment in Subordinate Cadre (for ex-servicemen employees) dated nil passed by the respondents 1 and 2 and quash the same and consequently direct the respondents to restore the pay scale of the petitioner's basic pay of Rs.42660/- as impugned revised fitment on



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appointment in Subordinate Cadre (for ex-servicemen employees) is illegal, arbitrary, without jurisdiction, violation of principles of natural justice and to consequently direct the respondents to re-pay all the amounts already deducted/recovered from the pay of the petitioner within a time frame.

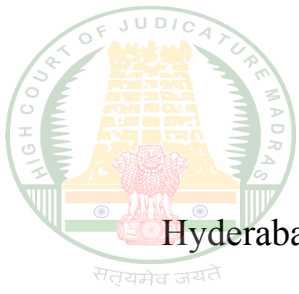
For Petitioner : Mr.K.M.Ramesh
Senior Advocate
for Mr.V.Sivaraman

For Respondents : M/s.V.M.Sreenidhi
for Agam Legal

ORDER

This writ petition has been filed for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned revised fitment on appointment in Subordinate Cadre (for ex-servicemen employees) dated nil passed by the respondents 1 and 2, to quash the same, and to direct the respondents to restore the pay scale of the petitioner's basic pay of Rs.42,660/- and consequently direct the respondents to re-pay all the amounts already deducted/recovered from the pay of the petitioner within a time frame.

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 State Bank of Hyderabad as Clerk-cum-Typist at its Regional Office, Chennai on 14.10.2009. Subsequently, State Bank of



Hyderabad, was amalgamated with State Bank of India, with effect from 01.04.2017. While so, the petitioner attained superannuation on 31.12.2021. At the time of joining State Bank of Hyderabad as Clerk cum Typist the petitioner's basic pay was fixed at Rs.5,055/- p.m., however, all of a sudden, he was paid only a sum of Rs.2,158/- for the month of October 2021. The petitioner states that a sum of Rs.49,034.01 was deducted from his salary for no reason.

3. As the respondents neither issued any letter or communication regarding the deduction, the petitioner approached the Branch Manager, who informed him that his pay scale was revised under the impugned revised fitment and so the recovery was ordered. Thereafter, the petitioner wrote a letter on 08.11.2021, to the 1st respondent but there was no response. Challenging the Reduction of basic pay and the consequent recovery made by the respondents, as illegal, arbitrary and contrary to the judgment of the Hon'ble Supreme Court of India, in the case of State of Punjab and others Vs. Rafiq Masih (white washer) and others, the petitioner has filed the above writ petition for the aforesaid relief.

4. The respondents filed counter denying all the contentions raised by the petitioner in the affidavit. The respondents stated that the petitioner was



appointed on 14.10.2009, and on the date of appointment, it was the 8th bi-partite settlement dated 01.11.2002, which was in force. Since on the date of joining the petitioner was governed by the 8th bi-partite settlement, his pay was fixed at Rs.5,725/- including graduation increments. 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 28.04.2010. Due to the delay in execution of the 9th bipartite settlement, the pay scale of the petitioner should have been revised at Rs.7,000/-, however it was fixed at Rs.8,400/-. The anomaly in pay scale continued over the years resulting in additional payments of Rs.6,78,486.15/-. As the amounts were paid erroneously the same were recovered while settling the terminal benefits of the petitioner.

5. As regards the revised fitment of the petitioner's pay from October 2021, was concerned it was submitted that as the fitment of the petitioner's pay from October 2009, was based on wrong fitment, 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.

6. The learned Senior Counsel for the petitioner submitted that the impugned order was passed without prior intimation to the petitioner



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and a sum of Rs.49,034/- was deducted from the salary in the month of October 2021. The learned Senior Counsel further submitted that a sum of Rs.6,33,415.71/- towards excess payments made from the date of the petitioner's appointment in October 2009, was recovered illegally, arbitrarily and in violation of principles of natural justice. The learned Senior Counsel submitted that absolutely no prior intimation was given to the petitioner before recovering the said amount and even the refixation of pay was not informed to the petitioner.

7. In support of his contentions the learned Senior Counsel relied on the judgments 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.

8. The learned counsel for the respondents fairly conceded that as far as recovery was concerned it was in violation of the law laid down by the Apex Court in Rafiq Masih's case. The counsel submitted that with respect to refixation the respondents should be permitted to pass fresh orders, after providing due notice and opportunity to the petitioner.

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



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10. With regard to recovery useful reference can be made to the 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 in the said judgment 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)

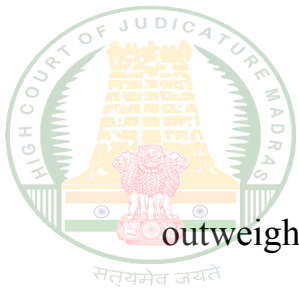
(ii) Recovery from the retired employees, or the employees who are due to retire within one year of the order of recovery

(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 was recovered. Moreover, the recovery of a huge sum of Rs.6,33,415.71 from the petitioner's terminal benefits would result in great hardship to him. The loss caused to the petitioner, in my view, far



outweighs the respondents right to recover and therefore the balance lies in favour of the petitioner. Hence the recovery of a sum of Rs.6,33,415.71/- from the petitioner's terminal benefits is held to be illegal.

11. From the materials placed before me, it is clear that the petitioner was not put on notice before re-fixing his pay.

12. 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



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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 the 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.

13. In the light of the above discussions, the impugned revised fitment cannot be sustained and hence it is set aside. As the recovery was made on the basis of an illegal revised fitment, I am of the view that the petitioner is entitled to refund of the recovered amount. Hence a direction is issued to the respondents to restore the pay scale of the petitioner at Rs.42,660/- and to consequently repay all the amounts recovered from the petitioner within a period of 12 weeks, from the date of receipt of a copy of this order, failing which the respondent shall pay interest @ 9%. No costs. Consequently, the connected miscellaneous petitions are closed.

08.04.2025
(1/2)

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Index: Yes/No
Speaking order / Non speaking order



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N. MALA, J.

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