



W.P. No.33008 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2025

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THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

W.P. No.33008 of 2017

and

W.M.P. Nos.36370 of 2017 and 9629 of 2018

A.Parameswaran,
RR Thoppu, Gandhi Nagar,
Pennagaram Taluk, Dharmapuri,
District-636 810.

Petitioner(s)

Vs

- 1.The Joint Director of Agriculture,
Dharmapuri-636 005.
- 2.The Deputy Director of Horticulture,
Dharmapuri-636 005.

Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the concerned records from the 2nd respondent, quash the order of the 2nd respondent



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dated 24.08.2016 bearing Letter No.A3/588/2016 and the order of the 2nd respondent dated 15.09.2016 bearing Se.Mu.B.A3/588/2016 as illegal, arbitrary and contrary to law and consequently direct the respondents to restore the pay of the petitioner and further direct the respondents to refund the recovery made from his salary.

For Petitioner(s) : Mr.S.Balan Haridas

For Respondent(s) : Dr.S.Suriya
Additional Government Pleader

ORDER

The challenge in this writ petition is to the order dated 09.05.2016 passed by the second respondent. By the said order, a sum of Rs.4,00,250/- is sought to be recovered from the petitioner on account of wrong fixation of pay scale.

2. While the petitioner was working as an Assistant in the office of the second respondent, his pay was initially fixed at Rs.8260/- plus Rs.2800 with effect from 01.01.2006 in the post of Junior Assistant. Thereafter, as per the Government Letters dated 08.11.2010 and 10.02.2011, the salary was



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revised to Rs.9300–34,800 with Grade Pay of Rs.4,200/- with effect from

01.01.2006. However, the monetary benefits were given only with effect from 01.02.2011.

3. In these circumstances, a memo dated 09.05.2016 was issued seeking recovery of a sum of Rs.4,00,250/-, stated to have been paid in excess on account of wrongful fixation of pay. Aggrieved by the same, the present writ petition has been filed.

4. The learned counsel for the petitioner submitted that the fixation of pay was not obtained by any fraud or misrepresentation on the part of the petitioner. Therefore, recovery of a sum of Rs.4,00,250/- from the petitioner who is a Class III employee is impermissible in law. In support of his contention, reliance was placed on the decision of the Hon'ble Supreme



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Court in *State of Punjab and Others vs. Rafiq Masih (White Washer),*

WEB.COM reported in (2015) 4 SCC 334.

5. Per contra, the learned Additional Government Pleader appearing for the State submitted that the excess amount is sought to be recovered on account of wrong fixation of pay at the time of revision. It was further submitted that the petitioner had given an undertaking to the effect that any excess payment found to have been made due to incorrect fixation would be liable to be recovered. Therefore, according to the respondents, the petitioner cannot now contend that the recovery is impermissible.

6. The arguments advanced by the learned counsel on either side and the materials available on record have been duly considered.

7. The salary of the petitioner was revised vide order dated 22.08.2012 in Board Proceedings No.A1/840/2012 issued by the Deputy Director of



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Horticulture, Dharmapuri. The said order does not disclose that the petitioner had given any undertaking for recovery of excess payment on account of wrong fixation of pay. Moreover, the impugned order also does not refer to any such alleged undertaking given by the petitioner.

8. In similar circumstances, the Hon'ble Supreme Court in **Rafiq Masih** (supra) summarised the situations in which recovery by the employer would be impermissible in law, namely:

- (i) recovery from employees belonging to Class III and Class IV (or Group C and Group D) services; and
- (ii) recovery from employees when the excess payment has been made for a period exceeding five years prior to the order of recovery, provided such excess payment was not made on account of fraud or misrepresentation on the part of the employee.



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9. In the present case, the petitioner is a Class III employee and the excess payment arose solely due to revision and wrong fixation of pay, and not due to any fraud or misrepresentation . Therefore, the recovery of excess payment from the petitioner is impermissible in law.

10. In view of the aforesaid decision of the Hon'ble Supreme Court, the impugned order passed by the second respondent is unsustainable and liable to be set aside.

11. Accordingly, the writ petition is allowed. The impugned order dated 24.08.2016 and the consequential order dated 15.09.2016 issued by the second respondent are hereby quashed. Any excess amount recovered from the petitioner shall be reimbursed to him within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.



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Index: Yes/No

Speaking/ Non-Speaking order

Neutral Citation: Yes/No

To:

- 1.The Joint Director of Agriculture,
Dharmapuri-636 005.
- 2.The Deputy Director of Horticulture,
Dharmapuri-636 005.



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HEMANT CHANDANGOUDAR, J.

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