



W.P.No.32789 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN**

**W.P.No.32789 of 2024
and
W.M.P.Nos.35622 & 35624 of 2024**

N.Sekar

... Petitioner

Vs.

- 1.The Registrar General,
High Court, Madras – 104.
- 2.The Chief Judicial Magistrate,
Cuddalore.
- 3.The Judicial Magistrate,
Additional Mahila Court,
Cuddalore.

... 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 of Office Order No.161 of 2024 dated 24.7.2024 passed by 2nd respondent for recovery of excess pay and allowance of Rs.1,13,646/- from petitioner and quash the same and consequently direct the respondents 1 and 2 to remit back the recovered amount to petitioner.



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For Petitioner : Ms.R.Varalakshmi

For R1 to R3 : Mr.M.Fakkir Mohideen

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ORDER

(Order of the Court is made by *R.SURESH KUMAR, J.*)

The prayer sought for is a Writ of Certiorarified Mandamus, to call for the records of Office Order No.161 of 2024 dated 24.7.2024 passed by 2nd respondent for recovery of excess pay and allowance of Rs.1,13,646/- from petitioner and quash the same and consequently to direct the respondents 1 and 2 to remit back the recovered amount to petitioner.

2. The writ petitioner has been working as a Night Watchman and now has been posted as Office Assistant from 10.06.2011. Both the Posts come under Group-'D' category as both are carrying the same Scale of Pay. While so, based on the Audit objections, the 2nd respondent had issued a proceedings dated 24.07.2024, whereby they wanted to re-fix the pay under FR 22 (B) of the Constitution of India at Rs.5790+1300 GP, instead of the pay to be retained without sanctioning the above promotional increment at Rs.5580+1300 GP with effect from 10.06.2011 and also sought for a recovery of a sum of Rs.1,13,646/- (Rupees One lakh thirteen thousand six hundred and forty six



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only) being alleged excessive payment, because of the wrong fixation of pay together with interest.

3. Challenging the said order, the present writ petition has been filed.

4. Heard Ms.R.Varalakshmi, learned counsel for the petitioner as well as Mr.M.Fakkir Mohideen, learned Standing counsel appearing for the respondents 1 to 3.

5. The learned counsel appearing for the petitioner would fairly submit that insofar as the proposal for re-fixation of pay is concerned, even though the order has been challenged in this writ petition, the petitioner is coming up for such a challenge insofar as the proposal for recovery.

6. However, with regard to the proposal for recovery of a sum of Rs.1,13,646/- with interest is concerned, since he is a Group-'D' employee, as per the law declared by the Hon'ble Supreme Court of India in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others***, reported in ***(2015) 4 SCC 334***, such a recovery could not be possible and therefore, the learned counsel for the petitioner seeks indulgence of this Court.



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7. The learned Standing counsel appearing for the respondents would submit that based on the Audit objections only, such an order has been passed and if there has been a wrong fixation of pay, that has to be set right. Hence, the present order dated 24.07.2024 has been issued and before issuing such order, already based on the wrong fixation, the excess payment has been made to the extent of Rs.1,13,646/- and naturally, the said amount has to be recovered. Therefore, he seeks indulgence of this Court to sustain the order impugned.

8. We have considered the said rival submissions made by the parties and perused the materials before this Court.

9. Insofar as the re-fixation is concerned, the learned counsel appearing for the petitioner has given up the said challenge. Hence, insofar as the proposal for re-fixation as has been stated in the impugned order dated 24.07.2024 is concerned, the same is to be sustained. Accordingly, it is sustained.

10. However, with regard to the recovery proposal to the extent of Rs.1,13,646/-, being the excess amount with future interests is concerned, the



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law settled by the Hon'ble Supreme Court of India in case of ***State of Punjab***

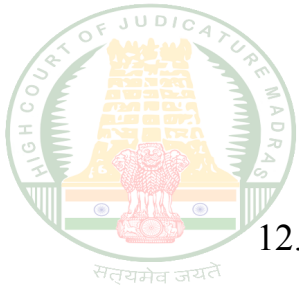
and others vs. Rafiq Masih (White Washer) and others (cited supra) would

squarely cover the issues raised in this writ petition as admittedly, the petitioner being the Group-'D' employee, from whom, such a recovery cannot be made by the employer.

11. In that view of the matter, this Court is inclined to dispose of the writ petition with the following orders:

(i) That the impugned order insofar as re-fixing the pay of the petitioner is concerned, the same is sustained. However, proposal for recovery of Rs.1,13,646/- with interest is concerned, the same shall not be given effect to or executed in view of the law having been declared by the Hon'ble Supreme Court as discussed herein above.

(ii) Hence, such a recovery portion alone of the impugned order dated 24.07.2024 is set aside.



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12. Resultantly, this writ petition is partly-allowed to the terms indicated

above. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) (C.S.N., J.)
06.01.2025

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To

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