



WEB COPY



W.P.No. 33799 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.01.2025

Coram:

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.33799 of 2024

K.Prasath

Vs.

...Petitioner

1. The Superintendent of Police,
Railways, Chennai – 08
2. The Inspector of Police,
Tambaram Railway Police Station,
Railway Police District
Tambaram, Chennai

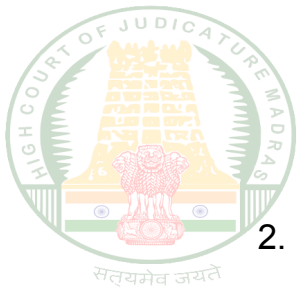
...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari to call for the impugned recovery order in Na.Ka.No.B1/4317/2024 Ma.Aa.No.494/2024 dated 07.10.2024 passed by the 1st respondent and quash the same as illegal.

For Petitioner	: Mr.R.Subburaj
For Respondents	: Mr.Abishek Murthy Government Advocate

ORDER

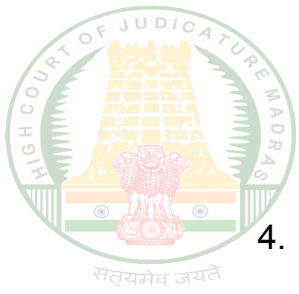
The present Writ Petition has been filed for an issuance of a Writ of Certiorari to call for the impugned recovery order in Na.Ka.No.B1/4317/2024 Ma.Aa.No.494/2024 dated 07.10.2024 passed by the 1st respondent and quash the same as illegal.



W.P.No. 33799 of 2024

2. It is the case of the petitioner that subsequent to the acquittal order, the enquiry officer rendered findings that the charges against the petitioner were proved, which resulted in punishment, wherein increment for a period of two years was postponed with cumulative effect by the 1st respondent. As against the same, the petitioner preferred an appeal, however, without considering the grounds, the appellate authority rejected the same vide order dated 22.02.2024. All of a sudden, the 1st respondent issued the present impugned recovery order dated 07.10.2024, wherein recovery of subsistence allowance was ordered on installment basis. Challenging the same, the petitioner has filed this present Writ Petition.

3. The learned counsel for the petitioner submits that the 1st respondent already imposed punishment for charges levelled against the petitioner. Therefore, the authority cannot be punished twice for one charge memo and the present impugned order amounts to 2nd punishment. Further, the similar issue as that of the petitioner was already dealt with by this Court in W.P.(MD)No.3356 of 2020 on 04.04.2022 and W.P.No.42971 of 2006 dated 05.11.2007, wherein recovery of subsistence allowance was set aside. Hence the same indulgence shall be shown to this petitioner also.



W.P.No. 33799 of 2024

4. Per contra, the learned Government Advocate appearing for the respondents submits that the petitioner was reinstated with minor punishment and the suspension period was treated as non-duty, therefore, the overdrawn amount of the above period was ordered to be recovered in installments from future pay, thereby pleaded to dismiss the petition.

5. Heard the learned counsel on either side and perused the documents placed on record.

6. It is to be noted that on 21.10.2020, the petitioner was placed under suspension and the same was revoked on 30.08.2022. Consequent to the suspension order, the petitioner received charge memo dated 04.05.2022, which was initiated based on the complaint given by the wife of the petitioner on 12.10.2020. The said complaint was registered as FIR No.7 of 2020 under Sections 498(A) and 506(ii) IPC and the same was ended in acquittal, but without considering the same, enquiry officer rendered a finding that the charges are proved and based on the findings of the enquiry officer, punishment of postponement of next increment for a period of two years with cumulative effect was invoked. Further, the impugned recovery order to recover the subsistence allowance was passed on 07.10.2024.

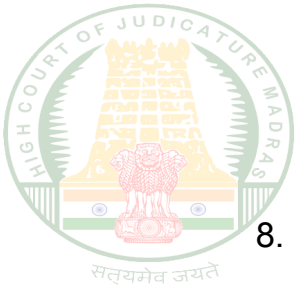


W.P.No. 33799 of 2024

WEB COPY

7. While dealing with the similar issue, this Court in W.P.(MD) No.3356 of 2020 dated 04.04.2022 at Paragraph No.3 has held as follows:-

“3. This Court is of the considered opinion that subsistence allowance is the livelihood, which was being paid when the employee was under suspension. Even if an order of punishment is imposed and the period of suspension is treated as punishment, then also, the subsistence allowance already paid cannot be recovered. In the present case, the period of suspension was regulated as leave eligible without salary. Thus, the salary for the suspension period need not be paid. But the subsistence allowance paid cannot be recovered. In the event of recovering the subsistence allowance already paid, the very purpose and object of the subsistence allowance will be defeated and furthermore, the payment of subsistence allowance is the livelihood of the employee, who is placed under suspension. These being the basic principles, the respondents have committed an error by passing an order of recovery of subsistence allowance already paid to the petitioner, when he was undergoing the period of suspension.”



W.P.No. 33799 of 2024

8. In view of the above said facts and circumstances of the case, the Writ Petition is allowed on the same lines and the impugned recovery order in Na.Ka.No.B1/4317/2024 Ma.Pa.No.494/2024 dated 07.10.2024 passed by the 1st respondent is quashed. The respondents / authorities are directed to refund the recovered amount, if any. Consequently, connected miscellaneous petition is closed. No costs.

28.01.2025

Index : Yes / No;
Internet : Yes / No
Speaking Order / Non Speaking Order
ssd

To

1. The Superintendent of Police,
Railways, Chennai – 08
2. The Inspector of Police,
Tambaram Railway Police Station,
Railway Police District
Tambaram, Chennai



WEB COPY



W.P.No. 33799 of 2024

V.BHAVANI SUBBAROYAN, J.

ssd

W.P.No.33799 of 2024

28.01.2025