



W.P.No.38004 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.01.2025

CORAM

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

**W.P.No.38004 of 2024
and
W.M.P.No.41097 of 2024**

D.Elumalai
S/o.E.Dhanapal

... Petitioner

-Vs-

1. The Registrar General,
High Court of Madras,
Chennai - 600 104.

2. The Principal District Judge,
Tiruvallur District,
Tiruvallur - 602 001.

3. The IV Additional District and Sessions Judge,
Tiruvallur, Ponneri.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent vide order dated 27.09.2024 in D.No.1165 of 2024 and quash the same and consequently, direct the third respondent to release the salary without any deduction and refund the recovered amount in the salary.



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For Petitioner : Mr.K.Selvakumar

For Respondents : Mr.S.Arjun Suresh

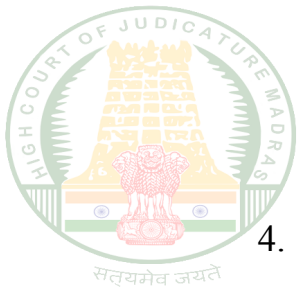
ORDER

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

This writ petition has been filed challenging the order passed by the IV Additional District and Sessions Judge, Tiruvallur, at Ponneri, who is the third respondent herein dated 27.09.2024.

2. The order impugned relates to the recovery of the alleged excess amount paid to the writ petitioner on the ground that, at the time of transfer from the post of Night Watchman to the post of Office Assistant on 01.07.2007, one increment has been fixed without proper sanctioning as the same ought not to have been fixed, thereby the excess payment made from the period 01.07.2007 to 31.07.2024 to the extent of a sum of Rs.2,05,590/- is to be recovered, therefore, the said impugned order has been passed by the third respondent.

3. Heard Mr.K.Selvakumar, learned counsel appearing for the petitioner and Mr.S.Arjun Suresh, learned counsel appearing for the respondents.



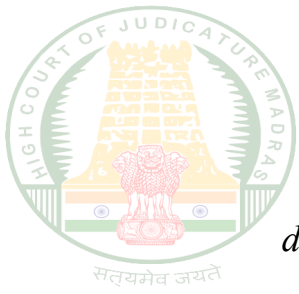
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4. Insofar as the excess payment made to the employee which is to be recovered is concerned, the law has been well settled in this regard right from the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334***, where the Hon'ble Supreme Court has noted the situation where such recovery could not be made possible and it is in fact, declared by the Hon'ble Supreme Court that it is unlawful.

5. Herein the case in hand, such a recovery since has been sought for, it may not be permissible in view of the law having been declared by the Hon'ble Supreme Court. That apart, in similar circumstances, we have discussed yet another writ petition in ***W.P.No.37843 of 2024***, where we have passed the following order:

*"3. Insofar as the re-fixation of salary is concerned, it is admitted by the learned counsel appearing for the petitioner that, such a re-fixation has been approved, but at the same time, insofar as the recovery of the alleged excess salary paid to the employee, i.e., petitioner is concerned, the issue is covered by a earlier decision of the Division Bench of this Court in a batch of ***W.P.Nos.8952 of 2023 etc., batch dated 04.03.2024*** in the matter of ***P.Ponnusamy Vs. The Registrar General, High Court of Madras and others.****

4. In fact, the said decision was made following the



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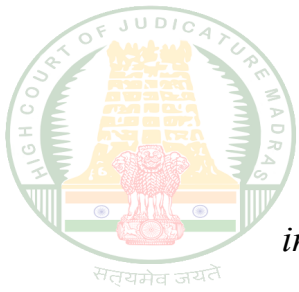
decision of the Hon'ble Supreme Court in the matter of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in (2015) 4 SCC 334.

5. The Division Bench in **Ponnusamy's case** has ultimately passed the following order:

"6. Accordingly, the revised pay fixed to the petitioners are to be continued as per the Pay Rules and the Government Orders in force. However, the excess Salary paid to the employees need not be recovered. If any amount has already been recovered, the recovered amount alone is directed to be refunded within a period of twelve weeks from the date of receipt of a copy of this order."

6. Insofar as the said order is concerned, both the learned counsel appearing for the parties agreed upon that, similar order may be passed in this case also upholding the re-fixation of the salary, but at the same time, the recovery shall not be made and insofar as the amount already been recovered also which is to be refunded is concerned, it is to be agreed by the learned counsel appearing for both sides and therefore, the learned counsel appearing for both sides also wants this Court to pass a similar order in this writ petition.

7. Having considered the said facts and circumstances of the case, in view of the order already been passed by the Division Bench in **Ponnusamy's case** and also the law having been declared in **White Washer's case** cited supra of the Hon'ble Supreme Court reported in (2015) 4 SCC 334, we are



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inclined to pass the following order in this writ petition:

(i) that insofar as the re-fixation of the salary through the impugned order dated 20.06.2022 is concerned, the same shall be upheld, accordingly, it is upheld.

(ii) However insofar as the recovery already been made and to be made for the excess amount paid is concerned, such a recovery shall not be made further and the already recovered amount also shall be refunded to the petitioner.

(iii) The needful as indicated above shall be completed or complied with by the respondents within a period of two months from the date of receipt of a copy of this order."

6. Since the issue raised in this writ petition is also similar to that of the earlier one where the said order has been passed in the writ petition, we are inclined to dispose of this writ petition in the same line.

7. Resultantly, the order impugned is set aside as no recovery could be possible to be made from the writ petitioner. If any recovery has already been made, that amount shall be refunded to the writ petitioner. Insofar as the fixation of salary including the increment is concerned, the correct fixation now being made or already been made shall be sustained and accordingly, it is sustained. The amount already been recovered, if any, shall be refunded to the petitioner within a period of two months from the date of receipt of a copy of



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this order.

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8. With these directions, this Writ Petition is ordered accordingly.

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

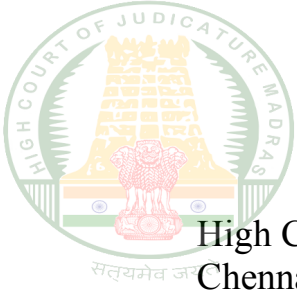
(R.S.K., J.) (C.S.N., J.)
21.01.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Registrar General,



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High Court of Madras,
Chennai - 600 104.

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2. The Principal District Judge,
Tiruvallur District,
Tiruvallur - 602 001.
3. The IV Additional District and Sessions Judge,
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C.SARAVANAN, J.**

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