



W.P.(MD)No.6165 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.03.2025

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.6165 of 2023

and

W.M.P(MD)Nos.5877, 5878 & 10928 of 2023

R.Rathinam

... Petitioner

Vs.

1.The Principal Accountant General,
AGS Office (Audit) Complex,
Chennai, Tamil Nadu.

2.The District Treasury Officer,
Collectorate Campus,
Kokirakulam,
Palayamkottai, Tirunelveli-627 009.

3.The Assistant Treasury Officer,
Ambasamudram,
Taluk Office Campus,
Ambasamuthiram, Tirunelveli-627 401.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the 3rd respondent made in Na.Ka.No. 393/A1/2020, dated 13.09.2022 and quash the same and consequently direct the respondents to disburse the petitioner's deducted pension amount.



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For Petitioner : M/s.S.Mamtha
For R1 : M/s.S.Mahalakshmi
Standing Counsel
For R2 & R3 : Mr.T.Amjad Khan
Government Advocate

ORDER

The present writ petition has been filed challenging the order of the 3rd respondent, dated 13.09.2022 and to direct the respondents to disburse the petitioner's deducted pension amount.

2. The case of the petitioner is that he served as a Teacher and retired from service on 31.01.1996. Pursuant to his retirement, his entire retirement benefits were disbursed and his monthly pension was calculated at Rs.1,279/- based on his last drawn salary. Later, monthly pension was increased from Rs. 1,279/- to Rs.4,020/- by extending the benefits of G.O.Ms.No.446, dated 18.09.2007. It is further claimed by the writ petitioner that pursuant to implementation of recommendation made by the 6th pay commission, Government issued G.O.Ms.No.235, dated 01.06.2009. Accordingly, the petitioner's monthly pension was refixed as Rs.9,086/- and after taking note of the fact that the petitioner herein have rendered a service of 26 and half years,



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Special Grade pay was taken note and his pay was refixed as Rs.10,295/-. It is

WEB.COM further claimed by the writ petitioner that pursuant to recommendations made by the 7th pay commission, Government issued G.O.Ms.No.313, dated 25.10.2017 and his pension pay was refixed as Rs.26,460/-. At this stage, the 2nd respondent declared a sum of Rs.2,34,480/- as excess amount paid to the petitioner as pension between 01.01.2007 to 30.04.2020 by the Indian Overseas Bank wrongly fixed and released the monthly pension to the petitioner at the rate of Rs.10,295/- instead of Rs.9,275/-. Accordingly, the 2nd respondent directed to recover the same. Subsequently, the 3rd respondent issued the impugned proceedings, dated 13.09.2022 fixed excess amount paid to the petitioner as Rs.2,94,480/- and directed to be recovered from the petitioner in 24 monthly installments. Aggrieved by the said order, the petitioner filed this writ petition.

3. On behalf of the respondents 2 and 3, a counter affidavit has been filed. Based on the averments made in the counter affidavit, the learned Government Advocate submits that before issuing the impugned order, the petitioner was issued notice to submit his objections and accordingly, the petitioner submitted his objections. Thereafter only, the impugned order is passed. The learned



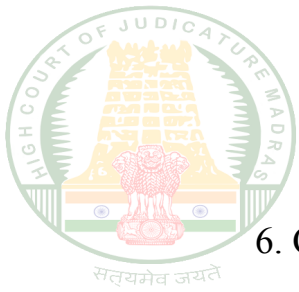
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Government Advocate further submits that aggrieved by the recovery order, the petitioner filed an appeal and revision before the competent authority and after considering the same, the objections of the petitioner are rejected. In view of the same, the petitioner cannot contend that there is violation of principles of natural justice in issuing the impugned order and sought to dismiss the writ petition.

4. This Court gives its anxious consideration to the submissions made by the respective counsels and carefully perused the materials available on record.

5. Admittedly, the petitioner, who served as a Teacher, retired from service on 31.01.1996. Now, after a lapse of 26 years, the respondents are contemplating to recover an amount of Rs.2,94,480/- on the ground that excess payment was paid to the petitioner by Indian Overseas Bank because of wrong fixation of the monthly pension to the petitioner. The only issue to be considered in this writ petition is whether respondents 2 and 3 are entitled to recover the alleged payment made to the petitioner at the rate of Rs.2,94,480/- vide impugned proceedings or not.



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6. Considering the facts and circumstances of the case, this Court is of the considered opinion that the 2nd and 3rd respondents are not entitled to recover the said amount from the petitioner in the light of certain law on this issue.

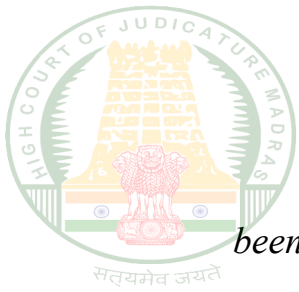
7. In fact, on several occasions, identical issue came up for consideration before this Court. By following the proposition of law laid down by the Hon'ble Apex Court reported in **2015 (4) SCC 334 (State of Punjab & Others Vs. Rafiq Masih(White Washer) & Others)**, this Court set aside the proceedings of recovery in W.P.No.6945 of 2022, dated 26.06.2023 and in W.P(MD)No.16106 of 2016, dated 20.07.2023. The relevant portion of the judgment of the Hon'ble Apex Court in **Rafiq Masih (White Washer)** (supra), is extracted herein under:

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).

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

(iii) Recovery from employees, when the excess payment has



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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 employers right to recover.”

8. One of the guidelines as relevant to the present case is that no recovery to be initiated from retired employees or employees, who are due to retire within one year of the order of recovery. In the present case, the original petitioner retired on 31.01.1996. The respondents passed order for recovery of the excess payment in the year 2022. Thus, the impugned order is unsustainable.

9. The Hon'ble Apex Court in **Thomas Daniel** case, while considering identical issue, held as extracted herein under:

“(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the



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respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.”

10. This Court in W.P.(MD) No.17154 of 2016 and W.P.(MD) No.22395 of 2016, while dealing the identical issues, has set aside the orders for recovery impugned therein.

11. On consideration of the facts and circumstances of the present case and in the light of the authorities stated supra, this Court has no hesitation to hold that the action of the third respondent in issuing the impugned order for recovery from the pension of the petitioner is illegal, arbitrary, unjust and in violation of the principles of natural justice and accordingly, the impugned order is liable to be set aside.



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WEB COPY 12. For the above reasons, the Writ Petition is allowed with the following

directions: -

i) The order in Na.Ka.No.393/A1/2020, dated 13.09.2022 issued by the third respondent is hereby set aside.

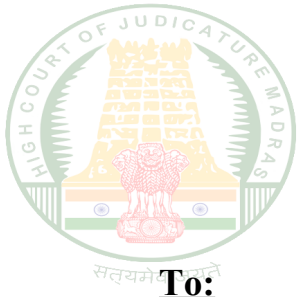
ii) Any amount recovered from the petitioner or arrears if any, shall be paid within six (6) weeks from the date of receipt of copy of this order.

13. No costs. Consequently, connected miscellaneous petitions are closed.

14.03.2025

NCC:yes/no
Index:yes/no
Internet:yes/no

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BATTU DEVANAND, J.

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