



W.P.(MD)No.11317 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.04.2025

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.11317 of 2025

and

W.M.P.(MD).Nos.8423 & 8424 of 2025

V.Gandhi

... Petitioner

Vs.

1. The Commissioner of Treasuries and Accounts,
3rd Floor, Perasiriyar K.Anbzhagan Maaligai,
No.571, Anna Salai, Nandanam,
Chennai-600 035.

2. The Joint Director,
Regional Treasuries and Accounts Office,
Madurai Region,
Madurai.

3. The Treasury Officer,
District Treasury Office, Theni,
Theni District.

4. The Assistant Treasury Officer,
Bodinayakanur,
Theni District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for

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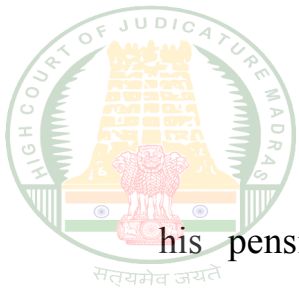
issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order made in Na.Ka.No.404/2021/A1 dated 27.10.2021 passed by the 4th respondent and quash the same as illegal and consequently direct the respondents to repay the amount recovered from the petitioner with 12% interest within the time limit fixed by this Court.

For Petitioner	: Mr.M.Kaliraj
For Respondents	: Mr.P.Subbaraj Special Government Pleader

ORDER

Heard, the learned Counsel for the petitioner, Mr.Subbaraj, learned Special Government Pleader appearing for the Respondents and carefully perused the materials available on record.

2. The petitioner who worked as Special Sub Inspector of Police in the police department, retired from service on 30.04.2002. Thereafter, he is receiving pension from 01.05.2002 onwards from the fourth respondent. In the year 2013, as per the pay commission recommendation his pensionable salary was refixed from the year 2006 and accordingly the fourth respondent paying

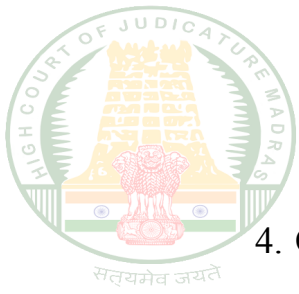


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his pension. Suddenly, the fourth respondent has issued proceedings in

Na.Ka.No.404/2021/A1 dated 27.10.2021 eliciting that the petitioner is getting pension excessively for a sum of Rs.2,55,011/- as revised pension for the period from 01.01.2007 to 31.07.2013 and ordered to recover the said amount from the petitioner within sixty four months. Accordingly, the respondents started recovery of Rs.4000/- from November-2011 onwards.

3. The learned Counsel for the petitioner submits that aggrieved by the order of recovery dated 27.10.2021 issued by the fourth respondent, the petitioner submitted several representations to the respondents. But, without considering the same, the respondents proceeded with the recovery for the last 42 months. The learned Counsel for the petitioner further contends that the order of recovery dated 27.10.2021 is in violation of principles of natural justice and also contrary to the law laid down by the Hon'ble Apex Court. Accordingly, he sought to allow the writ petition by quashing the impugned order of recovery dated 27.10.2021.



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4. On the other hand, the learned Special Government Pleader appearing for the respondents would submit that basing on the Annual Inspection Report of the Madurai Regional Joint Director, the fourth respondent found that there are excess payment of Rs.2,55,011/- in the revised pension of the petitioner for the period of 01.01.2007 to 31.07.2013 and accordingly, the present impugned order is passed to recover the said amount. The respondents have started recovery of Rs.4,000/- per month from November 2021 to till date. As such interference of this Court at this stage is not required and he sought to dismiss the present writ petition.

5. Having heard the submissions of the respective counsels and carefully perused the order impugned in this writ petition, it appears that before passing the recovery order, no show cause notice was issued to the petitioner and no opportunity for personal hearing was accorded to the petitioner. Accordingly, the said action is against to the principles of natural justice. On this ground alone the impugned order is liable to be quashed.



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6. Beside this, it is an admitted fact that the petitioner has retired from service on 30.04.2002 and the impugned order of recovery was passed only on 27.10.2021, i.e., after 19 years of retirement of the petitioner. The said act is not permissible, as per the decision of the Hon'ble Apex Court reported in **2015 (4) SCC 334 (State of Punjab & Others Vs. Rafiq Masih(White Washer) & Others)**. 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 ClassIV 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.



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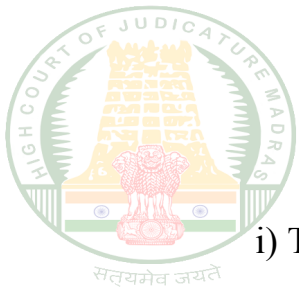
(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(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.”

7. In the said judgement, the Hon'ble Apex Court held that recovery from the retired employees, or employees who are due to retire within one year would be impermissible in law. This direction is squarely applicable to the present case.

8. Accordingly, this writ petition is allowed with the following directions :



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i) The order of recovery dated 27.10.2021 issued by the fourth respondent

is hereby quashed.

ii) The respondents are directed to refund the amount recovered from the petitioner within a period of four weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

22.04.2025

NCC:yes/no
Index:yes/no
Internet:yes/no
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BATTU DEVANAND, J.

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To:

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