



W.A(MD) Nos.693 & 694 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 08.01.2025

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

W.A(MD) Nos.693 & 694 of 2022

In W.A.(MD)No.693 of 2022

M.Basheer Ahamed

... Appellant / Petitioner

Vs

- 1.The General Manager,
Southern Railway,
Park Town,
Chennai-600 003.
- 2.Financial Adviser & Chief Account Officer,
Southern Railway,
Part Town, Chennai-600 003.
- 3.The Chief Personal Officer,
Southern Railway
Park Town, Chennai-600 003.
- 4.The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
6th Floor, MMC Building,
Part Town, Chennai-600 003.



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5.The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
Madurai Division,
Madurai-625 016.

6.The Divisional Personnel Officer,
Southern Railway,
Madurai Division,
Madurai-625 016.

7.The Sr.Divisional Financial Manager,
O/o.Divisional Railway Manager,
Southern Railway,
Madurai Division,
Madurai-625 016.

8.The Branch Manager,
Indian Overseas Bank,
Kodimangalam Branch,
Madurai.

9.The Chief Regional Manager,
Regional Office,
Indian Overseas Bank,
80 Feet Road,
Anna Nagar,
Madurai-20.

... Respondents / Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 02.06.2022 passed in W.P. (MD)No.19426 of 2016.



W.A(MD) Nos.693 & 694 of 2022

In W.A.(MD)No.694 of 2022

M.Basheer Ahamed

... Appellant / Petitioner

Vs.

- 1.The General Manager,
Southern Railway,
Park Town,
Chennai-600 003.
- 2.Financial Adviser & Chief Account Officer,
Southern Railway,
Part Town, Chennai-600 003.
- 3.The Sr.Divisional Financial Manager,
O/o.Divisional Railway Manager,
Southern Railway,
Madurai Division,
Madurai-625 016.
- 4.The Chief Personal Officer,
Southern Railway
Park Town, Chennai-600 003.
- 5.The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
6th Floor, MMC Building,
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- 6.The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
Madurai Division,
Madurai-625 016.



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7.The Divisional Personnel Officer,
Southern Railway,
Madurai Division,
Madurai-625 016.

... Respondents / Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 02.06.2022 passed in W.P. (MD)No.12007 of 2017.

For Appellant : Mr.M.Basheer Ahamed
(Party-in-Person)

For Respondents : Mr.K.R.Laxman
(in both appeals) for R1 to R7

COMMON ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

Heard the appellant in person and the learned standing counsel for the southern railways.

2. The appellant joined the railway protection force in the year 1975 as constable. In order to avoid stagnation service, the railways had a policy of Assured Career Progression Scheme. It was given once in 10 years. However, it had a caveat. Either the employee should opt for



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promotion or increment. In the case on hand, the appellant opted for promotion. He was accordingly promoted as Naik on 26.06.1991. The post of Naik was redesignated as head constable on 10.10.1997. The appellant was given second MACP on 01.10.1999. He was granted increment. Third MACP was granted on 01.09.2008. The appellant retired from service on 31.05.2012.

3. The stand of the railway is that though the appellant was entitled to monthly pension of Rs.7,880/-, he was erroneously sanctioned Rs.13,550/-. This amount was paid to the appellant for more than 4 years. The error was discovered only in 2014. Thereupon, the impugned orders dated 18.09.2014 & 11.08.2016 came to be passed. Questioning the same, the petitioner filed W.P.(MD)No.19426 of 2016 and W.P.(MD)No.12007 of 2017. The learned single Judge dismissed both the writ petitions vide order dated 02.06.2022. Challenging the same, these writ appeals came to be filed. W.A.(MD)No.694 of 2022 is directed against the order made in W.P.(MD)No.12007 of 2017. W.A.(MD)No. 693 of 2022 is directed against the order made in W.P.(MD)No.19426 of 2016. W.P.(MD)No.12007 of 2017 pertains to re-fixation of the pension.



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W.P.(MD)No.19426 of 2016 pertain to recovery.

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4. It is well settled that pension of an employee has to be fixed based on his last drawn pay. It is not in dispute that the appellant retired from service only in the rank of head constable. In fact, the Pension Payment Advice issued by the southern railway on 01.06.2012 clearly mentions that the appellant has to be paid Rs.7,880/- with relief as applicable. Due to the mistake committed by the railway management, an excess sum was paid to the appellant. For the mistake committed by the establishment, the appellant cannot be penalized. The issue raised in this writ petition is no longer rest integra.

5. The Hon'ble Supreme Court in the decision reported in **(2015) 4 SCC 334 (State Of Punjab & Ors vs Rafiq Masih (White Washer) and Others)** had held that recovery from the retired employees belonging to Class-III & Class-IV service is impermissible. Likewise, recovery from the retired employees is also impermissible. In this case, the petitioner cannot be said to be at fault. Therefore, we set aside the order effecting recovery from the petitioner's pension. The order dated 02.06.2022



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dismissing W.P.(MD)No.19426 of 2016 is set aside. **W.A.(MD)No.693 of 2022 is allowed.** We direct the respondents to re-credit the entire amount recovered from the appellant within a period of ten weeks from the date of receipt of a copy of this order.

6. As regards the re-fixation of the pension amount, we are more than satisfied that interference is not warranted. Even the Pension Payment Advice reads that the petitioner's entitlement is only Rs.7,880/- & relief as applicable. It was by mistake, an excess amount came to be paid. The mistake committed by the respondents was subsequently rectified by the impugned order. Therefore, the learned single Judge rightly dismissed W.P.(MD)No.12007 of 2017. **W.A.(MD)No.694 of 2022 is dismissed.** No costs.

(G.R.S., J.) (R.P., J.)
08.01.2025

Index : Yes / No
Internet : Yes / No
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R.POORNIMA, J.

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