



W.P.(MD).No.29322 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.29322 of 2024

and

W.M.P(MD) Nos.24754, 24756 and 24757 of 2024

K.Joseph

... Petitioner

Vs.

1. The Principal Secretary to the Government,
Home & Excise Department,
Secretariat, Chennai – 600 009.

2. The Director General of Police,
Head of Police Force,
Tamil Nadu, Chennai – 600 004.

3. The Accountant General (A&E)
361, Anna Salai,
Teynampet, Chennai – 600 018.

4. The Superintendent of Police,
Tirunelveli District.

5. The Treasury Officer,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, to call for the



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records relating to the impugned proceedings of the third respondent bearing P04/1/10433758/ADK/773, dated 30.01.2024 and quash the same as arbitrary illegal, and violation principles of natural justice, consequently, directing the fifth respondent not to recover pensionary benefits based on his proceedings bearing Na.Ka.No.286942/2024/K4, dated 25.07.2024.

For Petitioner : Ms.R.Jeya Ravathy
For R1, R2 : Mr.A.Baskaran
R4 and R5 Additional Government Pleader
For R3 :Mrs.S.Mahalakshmi
Standing Counsel

ORDER

The instant Writ Petition has been filed by a retired Special Sub-Inspector of Police, challenging the order passed by the third respondent on 30.01.2024, wherein an order of recovery and refixation of pay scale has been passed.

2. The writ petitioner herein was originally appointed as Grade II Police Constable and he was upgraded to Grade I Police Constable on 28.09.1999 and later, upgradation was granted as Head Constable on 28.10.2004. These two upgradations were treated as promotions and



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increments were granted by the concerned Superintendent of Police. When the pension proposals were forwarded by the concerned department to the third respondent, the third respondent found out that upgradations will not carry any monetary benefits, have been conferred increments upon the writ petitioner. Therefore, the third respondent has passed the impugned order dated 30.01.2024 pointing out Government Letter (MS) No.737, Home (Police V) Department, dated 18.08.2010 to the effect that advancement of upgradation to the posts of Grade I Police Constable and Head Constable are only for consideration of next upgradation and the individual should not claim any financial benefits.

3. According to the learned counsel appearing for the writ petitioner, the writ petitioner is receiving the said benefits from June, 2003 onwards. The petitioner got voluntary retirement on 31.08.2022. The impugned order has been passed by the third respondent on 30.01.2024 after his retirement. This would cause great prejudice to him. Hence, he has challenged the impugned orders.



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4. Per contra, the learned counsel appearing for the third respondent, relying upon Government Letter (MS) No.737, Home (Police V) Department, dated 18.08.2010 and the proceedings of the Director General of Police, dated 26.03.2015, contended that the upgradation to the posts of Grade I Police Constable and Head Constable are only for the purpose of advancing upgradation to the next level post, which would not carry any monetary benefits. Therefore, the writ petitioner has been granted monetary benefits by way of increments erroneously by the concerned authorities. This erroneous conferment of increments have been found, when the pension proposals were forwarded by the concerned department to the third respondent. Hence, the order dated 30.01.2024 impugned in this writ petition has been passed and he prayed for sustaining the orders impugned in this writ petition.

5. The learned Additional Government Pleader appearing for the respondents 1, 2, 4 and 5 had contended that the writ petitioner's pay was erroneously fixed without properly considering the Government Letter (MS) No.737, Home (Police V) Department, dated 18.08.2010 and therefore, the pay scale of the writ petitioner has to be revised and the excess payment has to be recovered from him. When the pay scale of the writ petitioner has been



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erroneously fixed, the contention of the writ petitioner that his batchmates and his juniors are receiving the said pay scales are not legally sustainable. He further contended that the judgment of the Hon'ble Supreme Court in the case of *State of Punjab & Others vs. Rafiq Masih (White Washer) and Others* reported in *2015 (4) Supreme Court Cases 334* is not applicable to the case of the writ petitioner.

6. I have carefully considered the rival submissions made on either side and perused the materials placed before this Court.

7. It could be seen from the Government Letter (MS) No.737, Home (Police V) Department, dated 18.08.2010 that the police personnel, who were recruited during the year 1987-1988 were upgraded to the post of Grade I Police Constable with effect from their actual date of completion of ten years of service in the rank of Grade II Police Constable. They were also upgraded to the post of Head Constable with effect from the actual date of completion of five years of service in the rank of Grade I Police Constable. It is further pointed out that these benefits are conferred only for consideration of next upgradation and the individual should not claim any financial benefits.



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8. Therefore, it is clear that despite upgradation, the writ petitioner would not be eligible for any monetary benefits. However, erroneously, without any misrepresentation or fraud on the part of the writ petitioner, the said benefits have been conferred upon the writ petitioner. The benefits have been conferred upon him for more than 12 years. When the writ petitioner was about to retire, and after his retirement, the orders impugned in this writ petition have been passed.

9. The Hon'ble Supreme Court, in the case of ***State of Punjab & Others vs. Rafiq Masih (White Washer) and Others*** reported in ***2015 (4) Supreme Court Cases 334*** has categorically held that when a benefit has been conferred upon an individual for more than five years, the same should not be recovered and that too, when the individual is about to retire or he has already retired. In the present case, the writ petitioner is enjoying the benefits for more than twelve years and just before his retirement, the order impugned in this writ petition dated 30.01.2024 has been passed.



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10. In view of the above said deliberations, the order impugned in this writ petition is set aside with regard to the recovery alone and this writ petition is partly allowed accordingly. However, the authorities are at liberty to refix the pay scale of the writ petitioner, as per the Government Letter (MS) No.737, Home (Police V) Department, dated 18.08.2010 and release the pensionary benefits and other terminal benefits in accordance with the said Government Letter. The refixation orders and the disbursement of the benefits, based upon the refixation shall be passed within a period of twelve 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.

22.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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