IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 07.01.2026	PRONOUNCED ON 10.02.2026

CORAM

THE HONOURABLE MR. JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Petition No.3998 of 2023
and W.M.P.No.4050 of 2023

1.Union of India,
Represented by the Additional Directorate General,
Directorate General systems,
Customs and Central Excise, South Zone,
No.26/1, Mahatma Gandhi Salai,
Nungambakkam, Chennai – 600 034. ... Petitioner

Vs

1.The Central Administrative Tribunal,
Chennai Bench, City Civil Court Buildings,
Second Floor, Chennai – 600 104.

2.K.Bharathi Premchand ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the first respondent in O.A.No.310/01303/2017 dated 21.07.2022 and quash the same and pass further orders.

For Petitioner : Mr.K.Srinivasa Murthy
Senior Panel Counsel

For R1 : Tribunal
For R2 : Mr.V.Vijaya Shankar

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Writ Petition has been filed challenging the order of the Central Administrative Tribunal, wherein, the order of recovery had been set aside.

2. Heard Mr.K.Srinivasa Murthy, learned Senior Panel Counsel for the petitioner and Mr.V.Vijaya Shankar, learned counsel appearing on behalf of the second respondent.

3. Mr.K.Srinivasa Murthy, learned Senior Panel Counsel appearing for the petitioner would submit that the second respondent entered the service on 17.11.1980 and had superannuated on 30.06.2017. He would submit that in the interregnum, she was promoted as Superintedent of Central Excise in the year 1997 and was also granted non-financial upgradation as on 01.01.2006. She was benefitted with the 2nd Assured Career Progression w.e.f 01.06.2008 and 3rd Modified Assured Career

Progression as on 17.11.2010. He would submit that an audit objection was raised on 15.07.2016 indicating that the 3rd MACP granted was not proper and recommended for recovery of the excess pay and allowance drawn from 17.11.2010 and also the pay to be calculated with effect from 01.01.2006.

4. A notice to that effect was also issued to the second respondent on 19.08.2016 for which a reply was also submitted by her indicating that the issue is covered by a judgment of this Court which had been affirmed by the Hon'ble Apex Court. Before the order of recovery and refixation was made, the second respondent attained the age of superannuation. The pension papers submitted to the Accounts General was returned directing reworking of the same based on the audit objections. Thereafter, the second respondent's pension was reworked and after adjusting a sum of Rs.3,80,096/- balance gratuity was also disbursed to the second respondent and her pension was also calculated on the reduced grade pay based upon the audit objections.

5. He would submit that challenging the same, the second respondent had approached the Central Administrative Tribunal where under the

impugned order the recovery had been set aside with a direction to refund the amount recovered and a further direction was also issued to refix the pensionary benefits based upon her last pay drawn. The learned counsel would submit that the same is contrary to the dictum of the Hon'ble Apex Court in ***Mohana Nair's case*** reported in ***2020 (5) SCC 421*** and as reiterated in a further judgment reported in ***2022 SCC Online 536***, he would submit that in the present case, therefore, the judgment of the Hon'ble Apex Court in White Washer's case ought not be to extended and therefore he seeks indulgence of this Court with the orders impugned herein.

6. Countering his arguments, Mr.V.Vijaya Shankar, learned counsel appearing on behalf of the second respondent would submit that fitment of the second respondent in an non-financial upgradation cannot be granted for counting financial upgradation either under the ACP or MACP Schemes. Further, he would submit that the second respondent had not attributed to such fixation and there cannot be said to be any element of fraud attributed to the second respondent. He would further submit that the issue involved in the Mohana Nair's case only relates to as to whether such financial upgradation is in the grade pay heirarchy or promotional heirarchy alone and

does not deal with the *lis* in the present case. He would further submit that the Hon'ble Apex Court in an another judgment relied upon by the learned counsel for the petitioner ***(2022 SCC Online 536)***, had held the recovery to be bad. Further relying upon the judgment of the Hon'ble Apex Court reported in ***2024 SCC Online SC 1901***, he would submit that in a similar case, the Hon'ble Apex Court had upheld the right of an employee to receive a higher grade pay as fixed and also entitled for recovery of the amount recovered from him. He would submit that there is no necessity to intefere with the orders impugned herein.

7. We have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

8. There is no dispute with regard to the grant of benefits under the ACP and MACP. Even though, an audit objection had been raised and informed to the second respondent, no efforts had been made to refix or recover the excess amount paid till the second respondent had superannuated from service. Only while issuing the Pension Order, based upon the objection raised by the Audit Department, a revised Pension Order along

with an order of recovery was suggested upon which a revised Pension Order and recovery of the excess amount paid was made from the gratuity payable to the second respondent. Before passing such an order, the second respondent was also not given an opportunity of hearing and hence, is in gross violation of principles of natural justice. In that context, it will be useful to refer to the judgment of the Hon'ble Apex Court relied upon by the learned counsel for the second respondent reported in ***2024 SCC Online SC 1909*** particularly paragraph 26 which is extracted hereunder:-

> *"**26.** The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay scale of Rs. 6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained."*

9. The Hon'be Apex Court had clearly set aside the order directing

reduction of the pay scale and also reduction of the recovery of the excess amount as grossly arbitrary and illegal but also suffering from non-adherence of principles of natural justice. We are of the view that the aforesaid judgment squarely applies to the present facts and circumstances of the case.

10. For the aforesaid reasons, the present Writ Petition stands dismissed. As a sequel, there shall be a direction to the petitioners to comply with the orders of the Tribunal within a period of twelve (12) weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

(C.V.K.,J.) **(K.B., J.)**
10.02.2026

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
Gba

To

The Central Administrative Tribunal,
Chennai Bench, City Civil Court Buildings,
Second Floor, Chennai – 600 104.

C.V. KARTHIKEYAN., J.
and
K.KUMARESH BABU.,J.

Gba

Writ Petition No.3998 of 2023
and W.M.P.No.4050 of 2023

10.02.2026