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Writ Petition No.6475 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-06-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

Writ Petition No.6475 of 2026

and

W.M.P.No.7037 of 2026

S.Durairaj
S/o.Sadayappan

..Petitioner

Vs

1. The Registrar General,
High Court Madras – 104.
2. The Special Judge,
Special Court for trial of NDPS Act Cases,
Villupuram.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the proceedings in Office Order D.No.78/2025 dated 19.11.2025 issued by the second respondent for recovery of excess pay and allowance of Rs.3,59,425/- from petitioner and quash the same and consequently, direct the respondents to remit back the recovered amount to the petitioner.

For Petitioner : Mr.S.Tamil Selvan

For Respondents : Mr.R.Sunil Kumar



ORDER

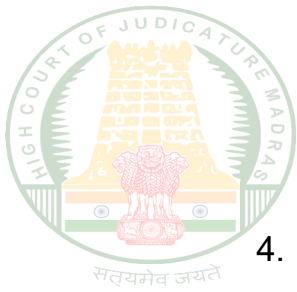
(Made by S.M.Subramaniam J.)

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This Writ Petition has been filed calling for the records of the second respondent in impugned proceedings dated 19.11.2025, quash the same insofar as recovery of excess pay and allowance and to direct the respondents to remit back the recovered amount.

2. The petitioner was promoted from the post of Assistant to Bench Clerk Grade III on 01.10.2010 and presently, the petitioner is working as Translator under the second respondent. The petitioner was sanctioned one increment for his promotion. But it was informed through impugned order dated 19.11.2025, that as per the G.O.Ms.No.17507/85-4/P and AR (Est-F), dated 24.07.1985, sanction of one increment for transfer from one post to other post in the same cadre was said to be inadmissible and the scale of pay was found to be excessive by the Audit Wing of this Court. Based on the audit objection, the pay was revised accordingly, and excess salary paid to the petitioner was sought to be recovered from the writ petitioner's salary.

3. Unjust gain of public money is impermissible under law. In such circumstances, the Authorities Competent are empowered to rectify the errors in fixation of pay and grant the correct pay as applicable. Thus, the revised pay fixation granted by the respondents in accordance with the Pay Rules and Government Orders shall continue.



4. However, the respondents are unable to establish that there was a misrepresentation on the part of the employee during fixation of pay. It is an error committed by the Establishment for which the petitioner cannot be penalised after a lapse of many years. Recovery of excess salary at this length of time would result in extreme hardship to the employee.

5. In this regard, the Hon'ble Supreme Court of India also enumerated the legal principles in the case of **State of Punjab v. Rafiq Masih [2015 4 SCC 334]** and held as hereunder:

“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 hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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

(iii) Recovery from the 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.



S.M.SUBRAMANIAM, J.
AND
N.SENTHILKUMAR, J.
gm

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(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

6. In view of the facts and circumstances, the revision of pay effected pursuant to the Audit Objection is confirmed, but the recovery of excess pay alone is set aside. The excess amount recovered on account of the impugned order is directed to be repaid to the petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order. Accordingly, the impugned order is set aside, with reference to the recovery of excess salary alone.

Accordingly, the Writ Petition stands partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

(S.M.S.,J.) (N.S.,J.)
09-06-2026

Index: Yes
Speaking order
Neutral Citation: Yes/No
gm

To

1. The Registrar General,
High Court Madras – 104.
2. The Special Judge,
Special Court for trial of NDPS Act Cases,
Villupuram.

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