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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-06-2026

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THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

WP No. 19114 of 2026

V.R.Kousalyaa

..Petitioner(s)

Vs

1. The Registrar General,
High Court of Madras, Chennai-104
2. The Subordinate Judge,
Sub Court, Gingee.

..Respondent(s)

Writ Petition filed under Article 226 of the Constitution of India issuing writ of certiorarified mandamus to Call for the records of the proceedings in Office order No.116 /2025 date 19/12/2025 issued by 2nd Respondent for recovery of excess pay and allowance of Rs.1,15,614 / from Petitioner and quash the same and consequently direct the respondents to remit back the recovered amount to the petitioner.

For Petitioner(s): Mr.S.Tamil Selvan

For Respondent(s): Mr.K.Umesh Rao for R1 & R2

ORDER**(Order of the Court was made by S.M.Subramaniam J.)**

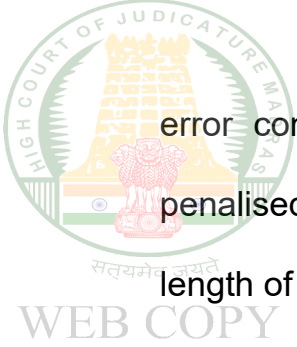
The Writ Petition has been filed to set aside the order of the 2nd respondent in Office Order No. 116/2025, dated 19.12.2025 and to direct the respondents to remit back the recovered amount to the petitioner.



2. Petitioner originally worked as Bench Clerk Grade- III, and now working as Bench Clerk Grade II, Sub Court, Gingee under the 2nd Respondent. Petitioner was promoted from the post of Assistant to Bench Clerk Grade III and joined duty as Bench Clerk Grade III and was sanctioned promotional increment on 24.02.2020 and her pay has been fixed at Rs.38,400/-. First Respondent, after a long time issued Audit Report and directed the 2nd Respondent that there was inadmissible sanction of one increment on transfer from the post of Assistant to the post of the Bench Clerk Grade III on the ground that the post of Bench Clerk Grade III is created by redeployment from the post of Assistants and not a promotion post. Hence, the excess pay and allowances on pay fixation for the period from 24.02.2020 to 30.11.2025 amounting to Rs. 1,15,614/- may also be worked out and to be recovered. Aggrieved by the order of the 2nd Respondent, the petitioner filed the present writ petition.

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**¹ 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

¹2015 4 SCC 334



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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 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 re-paid to the petitioner within a period of 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.



7. Accordingly, the Writ Petition stands partly allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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(S.M.S.,J.) (N.S.,J.)
01-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Registrar General,
High Court of Madras, Chennai-104
2. The Subordinate Judge,
Sub Court, Gingee.



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

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