



WP No. 23503 of 2026

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-06-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

WP No. 23503 of 2026

M.Selvanayagi
No.5/3,1st street
Kuppusamy Nagar
Ayyanavaram,
Chennai-23

..Petitioner

Vs

1. The Registrar General
High Court of Madras, Chennai-104.
2. Special Sub Judge No.1
(To Deal with MCOP cases)
Villupuram.

..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records of the proceedings in Office order No.79/2025 dated 10.11.2025 issued by 2nd respondent for recovery of excess pay and allowance of Rs.1,09,065/- from petitioner and quash the same and consequently direct the respondents to remit back the recovered amount to petitioner.

For Petitioners:

Mr.S.Tamil Selvan

For Respondents :

Mr Palanimuthu
Standing Counsel



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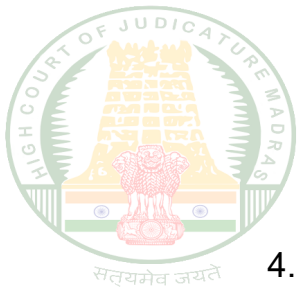
Order

WEB COPY (Order of the Court was made by S.M.Subramaniam J.)

The Writ Petition has been filed to set aside the order of the second respondent dated 10.11.2025 in respect of recovery of excess pay and allowance of Rs.1,09,065/- for the period from 06.08.2017 to 31.03.2024, from the petitioner.

2. Petitioner was appointed as Assistant to Bench Clerk Grade III and retired as Bench Clerk Grade II under the 2nd respondent. After a long time, the internal audit wing of the High Court had found inadmissible promotional increment to the petitioner because of the wrong fixation of salary and ordered to recover a sum of Rs.1,09,065/- being excess pay and allowance paid to the petitioner. Aggrieved by the said order of the second 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** and held as follows:

“ 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.



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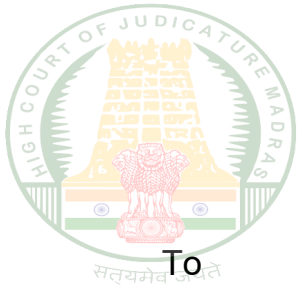
(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(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. Accordingly, the Writ Petition stands partly allowed. No costs.

(S.M.S.,J.) (R.S.V.,J.)
24-06-2026

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



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**S.M.SUBRAMANIAM J.
AND
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