IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-06-2026

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MRS.JUSTICE R. KALAIMATHI

W.A.No.1014 of 2026 AND
C.M.P.No.10369 of 2026

1. The Government of Tamil Nadu
Rep. by its Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi Department, Fort St. George,
Chennai - 600 009.

2. The Commissioner of Sericulture
Salem District, Salem 631 001.

3. The Assistant Director of Sericulture
Vaniyambadi, Vellore District.

..Appellants

-vs-

P.Sampath

..Respondent

Prayer: To set aside the Order dated 03.02.2025 made in WP.No. 32155 of 2014 and allow this appeal.

For Appellants:	Mrs.A.Suganya, Govt. Counsel
For Respondent:	Mr.V.S.Jagadeesan

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JUDGMENT

(Judgment of the Court was delivered by S.M.Subramaniam,J.)

State preferred the present Intra Court Appeal, challenging the writ order dated 03.02.2025 in W.P.No.32155 of 2014.

2. Writ Petitioner is a retired Government Servant and attained the age of superannuation on 30.06.2010. After a lapse of three years from the date of his retirement, Recovery Order has been passed vide proceedings dated 12.07.2013 on the ground that fixation of pay made to the respondent herein is in violation of Rules and Government Orders in force. Challenging re-fixation and recovery, Writ Petitioner preferred writ proceedings.

3. Writ Court partly allowed the writ petition to an extent of setting aside the recovery order issued vide proceedings dated 12.07.2013 issued by the 3rd appellant. Thus, State preferred the present writ appeal.

4. Learned Government Counsel for appellants would mainly contend that Madurai Bench of Madras High Court has taken a view that judgment in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others***[1], was passed subsequent to the impugned order of recovery and therefore, the said judgment would not be applicable to the present case. In the present case, impugned order of recovery and re-fixation of pay was made on 12.07.2013, prior to ***Whiter Washer's*** case and therefore, Writ Appeal is to be allowed.

[1](2015) 4 SCC 334

5. Learned counsel for the respondent would oppose, by stating that judgment rendered by Hon'ble Supreme Court in ***White Washer's*** case in respect of recovery of excess pay from retired employees is concerned, it would apply retrospectively. More so, in the present case, writ petition was pending at the time of passing of judgment in ***White Washer's*** case. Writ Petition was decided in the year 2025. Therefore, the ratio laid down by the Apex Court in ***White Washer's*** case is to be applied and Writ Appeal is to be rejected.

6. Rival submissions on behalf of parties to the *lis* are considered.

7. In the case of ***Kanishk Sinha and another vs. The State of West Bengal and another***[2], Supreme Court considered the legal position regarding judgment of Courts to be applied retrospectively or prospectively and made following observations:

> "3….The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had bona fidely done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many."

[2]2025 LiveLaw (SC) 259

8. The ratio initially laid down by the Apex Court in the case of ***Chandi Prasad Uniyal and others v. State of Uttarakhand and others***[3], reads as under:

> "14.We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

9. Thereafter, in the case of ***State of Punjab v. Rafiq Masih***[4], Hon'ble Supreme Court of India held as follows:

> "(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.

[3](2012) 8 SCC 417
[4](2015) 4 SCC 334

(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.

(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."

10. In the context of the above judgments, two aspects have to be considered, at the time of revision of scale of pay, namely,

(i) If an employee gives an undertaking that he will repay the amount, in the event of any excess payment; or

(ii) revision of pay was granted pursuant to the misrepresentation or otherwise, if any made by an employee.

11. Under such circumstances, competent authorities are empowered to recover the excess payment made by an employee by following the procedures. As far as Undertaking executed by an employee is concerned, legal position has been settled by the Hon'ble Supreme Court in the case of ***High Court Of Punjab & Haryana vs Jagdev Singh***[5], which reads as under:

[5](2016) 14 SCC 267

"10 In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc1. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

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

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

(iii) Recovery from 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.

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

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. In the present case, impugned recovery order has been issued after three years from the date of retirement of respondent. The appellants are not able to establish any misrepresentation on the part of

respondent in respect of execution of undertaking for repayment of excess pay, if any identified in future. In view of the above factual position, the order of learned Single Judge setting aside recovery cannot be construed as infirm. However, any error in fixation of pay if any identified shall be corrected and pension applicable to respondent is to be paid. If any amount has already been recovered pursuant to the recovery order, the said amount needs to be refunded without interest to respondent within a period of twelve weeks from the date of receipt of a copy of this judgment.

13. With the above direction, the present Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

(S.M.S.,J.) (R.K.M.,J.)
08-06-2026

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