



WEB COPY

W.P.No.46685 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-06-2026

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.46685 of 2025 AND
W.M.P.No.52091 of 2025

K.Arulmurugan

... Petitioner

-VS-

1. The Registrar General
The Hon'ble High Court of Madras,
High Court Building,
Chennai - 600 104.
2. The Hon'ble Sessions Judge,
Special Court for Exclusive Trial of Cases
Under SC/ST (POA) Act,
Villupuram District Court,
Villupuram.
3. The Hon'ble Subordinate Judge,
Combined Court Buildings,
Ulundurpet, Kallakurichi District.

... Respondents

Prayer: Calling for the records in impugned official memorandum in D.No.1111/25 dated 03.11.2025 passed by the 3rd respondent for recovery of excess claim of pay and allowance of Rs.2,02,944/- for the period from 07.01.2008 to 30.09.2021 from the petitioner and quash the same

For Petitioner: Mr.G.Balamanikandan

For Respondents: Mr.O.G.Dhilip Roshan
For Mr.C.R.Malarvannan



ORDER

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

The Writ Petition has been filed to set aside the order of the 3rd respondent in D.No.1111/25 dated 03.11.2025 in respect of recovery of excess pay and allowance of Rs.2,02,944/- for the period from 07.01.2008 to 30.09.2021 from the petitioner.

2. Petitioner was appointed as Night Watchman on 01.08.2001 and subsequently, promoted as Office Assistant on 07.01.2008. Thereafter, he was promoted as Record Clerk on 01.03.2010 and now, he is working as Junior Assistant in the Office of 3rd respondent. 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 Night Watchman to the post of Office Assistant and similarly from the post of Office Assistant to Record Clerk on the ground that the Class-IV Employees may be appointed to the Class-III posts only by way of transfer of service and the same cannot be treated as promotion. Hence, the excess pay and allowances on pay fixation for the period from 07.01.2008 to 30.09.2021 amounting to Rs.2,02,944/- may also be worked out and to be recovered. Aggrieved



by the order of the 3rd Respondent, the petitioner filed the present writ petition.

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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

¹2015 4 SCC 334



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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.

(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.)
16-06-2026

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

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The Hon'ble High Court of Madras,
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