

W.P.(MD) No.14857 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.06.2025

Pronounced on : 03.07.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P. (MD) No.14857 of 2016

and

W.M.P. (MD) Nos.10981, 10982 of 2016, 2992 & 3160 of 2017

P.Ganga Parameshwaran (Died)
S / o. Paabavinasam
No.133B, South Car Street,
Paland, Dindigul District.

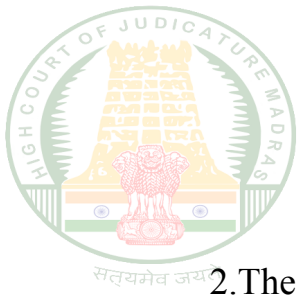
Lakshmi,
Late W/o.Ganga Parameshwaran
No.70/2-B3, Thiyagi Singaravelan Street,
Thuraiyur – 621 010,
Trichy District.

(Petitioner substituted vide Court order dated
05.06.2023 in W.M.P.(MD)No.4893 of 2020
in W.P.(MD)No.14857 of 2016 by SSYJ)

...Petitioner

Vs.

1.The Government of TamilNadu,
Rep. by the Principal Secretary,
Department of Higher Education,
Chennai-9.



W.P.(MD) No.14857 of 2016

WEB COPY

2.The Joint Director of Collegiate Education,
Madurai Region,
Madurai.

3.The Assistant Treasury Officer,
Palani,
Dindigul District.

4.Arulmigu Palaniandavar College of
Arts and Culture,
Rep. by its Secretary,
Palani, Dindigul District.

5.S.V.Veeraiyan,
S/o.Sinnavelandi,
No.12/131, Lakshmipuram,
Palani – 1, Dindigul District.

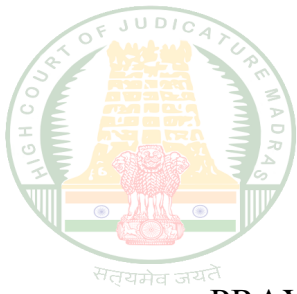
(R5 is impleaded vide Court order dated
20.06.2023 in W.M.P.(MD)No.7064 of
2023 in W.P.(MD)No.14857 of 2016 by
SSYJ)

... Respondents

PRAYER in W.P.:

To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings in K.M.No.20/2016/A, dated 19.07.2016 issued by the 3rd respondent, quash the same and direct the 3rd respondent to return the amount collected from the petitioner in pursuant to the impugned proceedings.

(Prayer amended vide Court order dated 30.09.2024 in W.M.P.(MD)No. 19029 of 2024 in W.P.(MD)No.14857 of 2016 by AQJ)



W.P.(MD) No.14857 of 2016

WEB COPY

PRAYER IN W.M.P.(MD) No.10981 of 2016:

To dispense with the production of the impugned proceedings in K.M.No.20/2016/A, dated 19.07.2016 issued by the 3rd respondent for the present and thus render justice.

PRAYER IN W.M.P.(MD) No.10982 of 2016:

To stay the operation of proceedings in K.M.No.20/2016/A, dated 19.07.2026 issued by the 3rd respondent, pending disposal of the above Writ Petition and thus render justice.

PRAYER IN W.M.P.(MD) Nos.2992 & 3160 of 2017:

To vacate the interim order passed in W.M.P.(MD).No. 10982 of 2016 in W.P.(MD).No. 14857 of 2016 dated 12.09.2016 and thus render justice.

APPEARANCE OF PARTIES:

For Petitioner : Mr.M.Saravanan

For Respondents : T.Amjad Khan,
Government Advocate for R1 to R3

: Mr.K.Govindarajan for R4

: Mr.P.Aathimoola Pandian for R5



W.P.(MD) No.14857 of 2016

WEB COPY

J U D G M E N T

Heard.

2. The original Petitioner is no more. Even at the time of filing of the writ petition, he was aged about 86 years. After his demise, his legal representatives have been brought on record. They were also permitted to amend the prayer in the writ petition accordingly.

3. The original Petitioner was employed in the 4th Respondent college, which is run by the Hindu Religious and Charitable Endowments Department and treated as an aided private college. In the matter of fixation of selection grade pay, an error had crept in while calculating the pay, as a result of which the Petitioner was allowed to draw excess salary. This excess payment was also reckoned for the purpose of pension after his retirement. Upon audit, an objection was raised with respect to the erroneous fixation and the resultant excess payment from the Government exchequer. It is pursuant to this recovery that the original Petitioner approached this Court.



W.P.(MD) No.14857 of 2016

WEB COPY 4. The circumstances under which the recovery came to be effected have been set out in the counter affidavit filed by the Respondent, which reads as follows:

“As per revised U.G.C. Scale, pension to the pensioners governed by UGC also been revised to the following effect.

S. No	Name of post	Pre revised scale of pay with effect from 01.01.1986	Existing scale of pay with effect from 01.01.96 (UGC scales of pay)	Revised pay Band Scale of pay and Grade Pay (UGC scales of pay)	Pension = 50% of sum of minimum of revised scale + AGP Rs.	Family Pension- 30% if sum of minimum of revised scale + AGP Rs.
1.	Lecturer Selection Grade	3700-125-4950-150-5700	12000-420-18300	15600-39100+8000	11,800	7,080
2.	Lecturer SG with three years	3700-125-4950-150-5700	12000-420-18300	37400-67000+9000	23,200	13,920

Since, the petitioner rendered only 2 years 7 months from 01.01.1986 to 31.07.1988 in the cadre of Lecturer Selection Grade in the time scale of pay of Rs.3700-125-4950-150-5700 and there is a short fall of 5 months to complete 3 years, of service into the alleged 'time scale'. Accordingly, the petitioner is eligible to get pension as per Column No.1 as above. But, he has been wrongly sanctioned with the pension as mentioned in



WEB COPY



W.P.(MD) No.14857 of 2016

Column No.2, which is only applicable to the Lecturer
Selection Grade with three years and above”

5. The learned counsel for the petitioner submitted that the impugned recovery was effected without affording any notice to the original petitioner, either at the stage of audit or at the time of revising the pensionary benefits. He pointed out that even a copy of the audit objection was not furnished to the petitioner, thereby depriving him of an opportunity to respond or clarify. Placing reliance on the decisions of the Hon'ble Supreme Court in *State of Punjab v. Rafiq Masih (White Washer)*, reported in (2015) 4 SCC 334 and *Thomas Daniel V. State of Kerala*, reported in 2022 SCC OnLine SC 536, as well as G.O.(Ms.)No. 286, Finance (Pension) Department, dated 28.08.2018 issued by the State Government, learned counsel argued that the recovery from a retired employee, particularly after a long lapse of time and absent any fraud or misrepresentation, would be arbitrary, disproportionate and violative of Article 14.

6. Per contra, the learned Government Advocate appearing for the official respondents contended that the petitioner had served only 2 years and 7 months in the Selection Grade post and had not completed the



W.P.(MD) No.14857 of 2016

minimum three years' service required to qualify for the higher pension under UGC norms. He referred to paragraph No.4 of the counter affidavit to highlight that the pension was wrongly calculated as if the petitioner belonged to the category of "Lecturer Selection Grade with three years and above", which was factually incorrect. He submitted that this was not a matter of interpretation but a question of eligibility, and that the recovery initiated upon audit was legally sound and justified. This Court has taken due note of these rival submissions and the materials placed on record.

7. Upon careful consideration of the rival submissions, this Court is of the view that although the petitioner was not served a copy of the audit objection or given a pre-recovery hearing, the error in pay fixation was purely mechanical and undisputed – a short fall of five months in qualifying service that directly impacted eligibility. In such circumstances, where the material facts are objectively verifiable and not susceptible to subjective explanation, the absence of notice, though procedurally improper, has not resulted in any real prejudice. The recovery, being based on ineligibility and not a discretionary reassessment does not attract the hardship exceptions invoked by the



W.P.(MD) No.14857 of 2016

petitioner. Hence, the question of refund of the excess amount paid to the LRs of the original petitioner does not arise. In this context, it is apposite to refer to the judgment of the Hon'ble Supreme Court in **Chandi Prasad Uniyal V. State of Uttarkhand, reported in (2012) 8 SCC 417**, wherein it was observed as follows:

“16. 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



WEB COPY



W.P.(MD) No.14857 of 2016

implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

8. While the decision in **Chandi Prasad Uniyal V. State of Uttarkhand reported in (2012) 8 SCC 417** held that excess payments made without authority of law can be recovered regardless of fault, the Supreme Court in **State of Punjab V. Rafiq Masih (White Washer), reported in (2015) 4 SCC 334** held that recovery from retired employees, or where the overpayment continued for over five years due to administrative mistake, would be iniquitous and therefore impermissible. This position was further affirmed and applied in **Thomas Daniel V. State of Kerala, reported in 2022 SCC OnLine SC 536**, where the Court restrained recovery sought nearly ten years after retirement, noting that such action would offend principles of fairness and proportionality. However, in the present case, the excess payment stemmed from a misapplication of the eligibility criteria for pension fixation under UGC scales, and the recovery was initiated after audit objection. Hence, the present case does not attract the hardship-based protection and the principle in **Chandi Prasad Uniyal** squarely applies to this case.



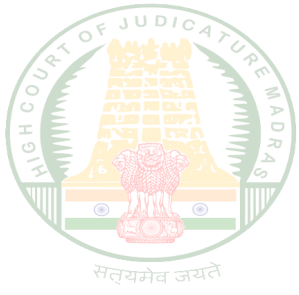
W.P.(MD) No.14857 of 2016

WEB COPY 9. Hence, the relief sought for refund cannot be granted. Hence, the Writ Petition will stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.07.2025

LS

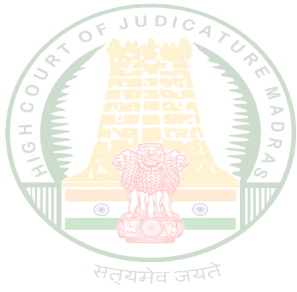
Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation : Yes / No



W.P.(MD) No.14857 of 2016

WEB COPY

- To
- 1.The Principal Secretary,
Government of TamilNadu,
Department of Higher Education, .
Chennai-9.
 - 2.The Joint Director of Collegiate Education,
Madurai Region,
Madurai.
 - 3.The Assistant Treasury Officer,
Palani,
Dindigul District.



WEB COPY



W.P.(MD) No.14857 of 2016

DR. A.D. MARIA CLETE, J

LS

Pre-delivered Judgment made in
W.P. (MD) No.14857 of 2016
and
W.M.P. (MD) Nos.10981 & 10982 of 2016,
2992 & 3160 of 2017

03.07.2025