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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

CORAM :

THE HONOURABLE MR.JUSTICE **NOOTY.RAMAMOHANA RAO**

and

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Writ Appeal (MD) Nos.26, 889 and 892 of 2016
& C.M.P(MD)Nos.158, 5359 and 5366 of 2016

Writ Appeal (MD) No.26 of 2016

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department,
Chennai - 9.
- 2.The Director of Elementary Education,
College Road, Chennai - 6.
- 3.The District Elementary Education Officer,
Sivagangai District.
- 4.The Additional Assistant Elementary Education Officer,
Thirupathur,
Sivagangai District. ... Appellants/Respondents 1 to 4

-Vs-.

- 1.Tmt.R.Pandimeenal,
Secondary Assistant,
S.P.D. Kalasalai Middle School,
Kandavarayanpatti,
Thirupathur Taluk,
Sivagangai District. ...1st Respondent/Writ Petitioner

- 2.The Secretary,
S.P.D. Kalasalai Middle School,
Kandavarayanpatti,
Thirupathur Taluk,
Sivagangai ...2nd Respondent/5th Respondent

Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 18.04.2013 in W.P.(MD) No.9530 of 2010.

Prayer in WP(MD). 9530/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the entire documents connected with the impugned order passed by the 4th Respondent in Na.Ka.No.41/A2/2004 dated 08-01-2004 and quash the same in the light of the judgment reported in 2004 (2) L.W. 591 in the case of The State of Tamil Nadu rep. by its Secretary, Education Department and others -Vs- Pallivasal Primary School, Mudukulathur



and direct the 3rd and 4th Respondents to refund the amount to the petitioner to the tune of Rs.55,811/- which was already recovered from the salary of the petitioner.

For Appellant : Mr.VR.Shanmuganathan
Special Government Pleader
For Respondent 1 : Mr.K.Mariyappan

Writ Appeal (MD) No.889 of 2016

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department,
Chennai - 9.
- 2.The Director of Elementary Education,
College Road, Chennai - 6.
- 3.The District Elementary Education Officer,
Sivagangai District.
- 4.The Additional Assistant Elementary Education Officer,
Thirupathur,
Sivagangai District. ... Appellants/Respondents 1 to 4

-Vs-

- 1.Tmt.A.R.Meenal,
Secondary Assistant,
S.P.D. Kalasalai Middle School,
Kandavarayanpatti,
Thirupathur Taluk,
Sivagangai District. ...1st Respondent/Writ Petitioner
- 2.The Secretary,
S.P.D. Kalasalai Middle School,
Kandavarayanpatti,
Thirupathur Taluk,
Sivagangai ...2nd Respondent/5th Respondent

Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 18.04.2013 in W.P.(MD) No.9531 of 2010.
Prayer in WP(MD). 9531/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the entire documents connected with the impugned order passed by the 4th Respondent in Na.Ka.No.41/A2/2004 dated 08-01-2004 and quash the same in the light of the judgment reported in 2004 (2) L.W. 591 in the case of The State of Tamil Nadu rep. by its Secretary, Education Department and others -Vs- Pallivasal Primary School, Mudukulathur and direct the 3rd and 4th Respondents to refund the amount to the petitioner to the tune of Rs.55,811/- which was already recovered



from the salary of the petitioner.

For Appellant : Mr.VR.Shanmuganathan
Special Government Pleader
For Respondent 1 : Mr.S.N.Ravichandran

Writ Appeal (MD) No.892 of 2016

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department,
Chennai - 9.
- 2.The Director of Elementary Education,
College Road, Chennai - 6.
- 3.The District Elementary Education Officer,
Sivagangai District.
- 4.The Additional Assistant Elementary Education Officer,
Thirupathur,
Sivagangai District. ... Appellants/Respondents 1 to 4

-Vs-

- 1.Tmt.I.Mahalakshmi,
Secondary Assistant,
S.P.D. Kalasalai Middle School,
Kandavarayanpatti,
Thirupathur Taluk,
Sivagangai District. ...1st Respondent/Writ Petitioner
- 2.The Secretary,
S.P.D. Kalasalai Middle School,
Kandavarayanpatti,
Thirupathur Taluk,
Sivagangai ...2nd Respondent/5th Respondent

Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 18.04.2013 in W.P.(MD) No.9529 of 2010.

Prayer in WP(MD). 9529/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the entire documents connected with the impugned order passed by the 4th Respondent in Na.Ka.No.41/A2/2004 dated 08-01-2004 and quash the same in the light of the judgment reported in 2004 (2) L.W. 591 in the case of The State of Tamil Nadu rep. by its Secretary, Education Department and others -Vs- Pallivasal Primary School, Mudukulathur and direct the 3rd and 4th Respondents to refund the amount to the petitioner to the tune of Rs.53,200/- which was already recovered



from the salary of the petitioner.

For Appellant : Mr.VR.Shanmuganathan
Special Government Pleader
For Respondent 1 : Mr.S.N.Ravichandaran

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COMMON JUDGMENT

(Judgment of the Court was delivered by **NOOTY.RAMAMOHANA RAO, J**)

These appeals are preferred aggrieved by that part of the order of the learned Single Judge whereby and whereunder the proposed recovery of the amounts already paid in favour of the writ petitioners has been quashed. It is a settled principle of law that so long as the claim for payment is not a fraudulent one and it is not the result of any misrepresentation on the part of the employee concerned, such recoveries are not to be ordered normally inasmuch as the Government servant would not have kept away the money which he has received in anticipation that the same may have to be refunded to the Government later on. Further, we are also informed that when a similar lis has fallen for consideration, another Division Bench by its judgment dated 02.04.2004 rendered in W.A.(MD) Nos.249 of 2004 and batch, has dismissed the appeal. In that view of the matter, for the same set of reasons which are set out by the Division Bench in its judgment dated 02.04.2004 rendered in W.A.(MD) Nos.249 of 2004 and batch, we also dismiss these Writ Appeals holding that no recovery should be made from the salary of the respondents/writ petitioners. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Education Department, Fort St.George, Chennai - 9.
- 2.The Director of Elementary Education,
College Road, Chennai - 6.
- 3.The District Elementary Education Officer,
Sivagangai District.
- 4.The Additional Assistant Elementary Education Officer,
Thirupathur, Sivagangai District.

+1 CC to Mr.SINGARAVADIVEL, Advocate, SR No.30072

Writ Appeal (MD) Nos.26, 889 and 892 of 2016

13.06.2016