

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.33570 of 2012

K.Malarkodi

... Petitioner

Vs

- 1.The Director of Elementary Education,
College Road,
Chennai-6.
- 2.The District Elementary Educational Officer,
Ariyalur District,
Ariyalur.
- 3.The Assistant Elementary Educational Officer,
Andimadam,
Ariyalur.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order of recovery passed by the 3rd respondent in proceeding Na.Ka.No.99/A1/2011, dated 09.06.2012 and quash the same and consequently direct the respondents to pay the recovered amount and restore the fixation made in proceeding Na.Ka.No.361/06/A1, dated 06.03.2007 with all benefits.

For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.S.Gunasekaran,
Additional Government Pleader

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O R D E R

Heard Mr.R.Prem Narayan, learned counsel for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order

of recovery passed by the 3rd respondent in proceeding Na.Ka.No.99/A1/2011, dated 09.06.2012 and quash the same and consequently direct the respondents to pay the recovered amount and restore the fixation made in proceeding Na.Ka.No.361/06/A1, dated 06.03.2007 with all benefits."

3. The case of the petitioner is as follows:-

The petitioner was working as Middle School Headmistress in Panchayat Union Middle School, Andimadam, Ariyalur District. After serving as such, she retired on 31.08.2011, on attaining the age of superannuation. According to the petitioner, while in service, she was granted selection grade and payment was fixed on that basis. She was getting the same with effect from 05.10.2005. While so, the third respondent passed an order on 09.06.2012, stating that while the petitioner was in service, she had been paid an excess amount of Rs.1,37,698/- and the same had been recovered from her pensionary benefits. In view of the recovery order passed by the third respondent, the petitioner's retirement benefits were withheld.

4. The learned counsel for the petitioner would submit that the order of recovery dated 09.06.2012 which is impugned in the writ petition, is vitiated for more than one reason.

(i). No notice was given to the petitioner before the impugned order was passed.

(ii). The so called excess payment made to the petitioner was not due to any misrepresentation on the part of the petitioner and therefore, such recovery, that too after the retirement of the petitioner cannot be valid.

(iii). The learned counsel would submit that the issue raised in the writ petition is directly covered by the law laid down by the Hon'ble Supreme Court of India, in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others, reported in 2015 4 SCC 334. The Hon'ble Supreme Court of India has clearly held in the said judgment in paragraph 18, which is extracted below:-

"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 herein above, we may, as a ready reference, summarise 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 be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

According to the learned counsel for the petitioner, the petitioner is a retired employee and also belonging to Group C service and therefore the case of the petitioner would be directly covered under Sub Clause (i) and (ii) of paragraph 18 of the judgment, passed by the Hon'ble Supreme Court of India.

5. Upon notice, the learned Additional Government Pleader appearing for the respondents entered appearance and filed a counter affidavit. In the counter, it is stated that the recovery was issued on the basis of certain audit objection, as the petitioner was wrongly fixed in the selection grade. According to the learned counsel, certain wrong entries made in the service book of the petitioner which resulted in excess payment being paid to the petitioner.

6. In any event, it was not the fault of the petitioner when some wrong entries were made in the service register. It was not the case of the respondent either that there was an active misrepresentation on the part of the petitioner while the pay scale was fixed and payment made.

7. In the said circumstances, this Court is in agreement with the submission made by the learned counsel for the petitioner that the claim of the petitioner is covered by the law laid down by the Hon'ble Supreme Court of India, in the aforesaid decision. Therefore this Court has no hesitation in allowing the writ petition. During the course of arguments, it was submitted by the learned counsel for the petitioner that the amount sought to be recovered was paid by the petitioner to the Department. If that is a fact, the following order is issued. The impugned order Na.Ka.No.99/A1/2011, dated 09.06.2012 is set aside. The respondents are directed to refund the amount recovered from the petitioner, within a period of two months from the date of receipt of a copy of this order.

8. With the above direction, the writ petition is allowed.
No costs.

-s/d-
Assistant Registrar(CS-IV)

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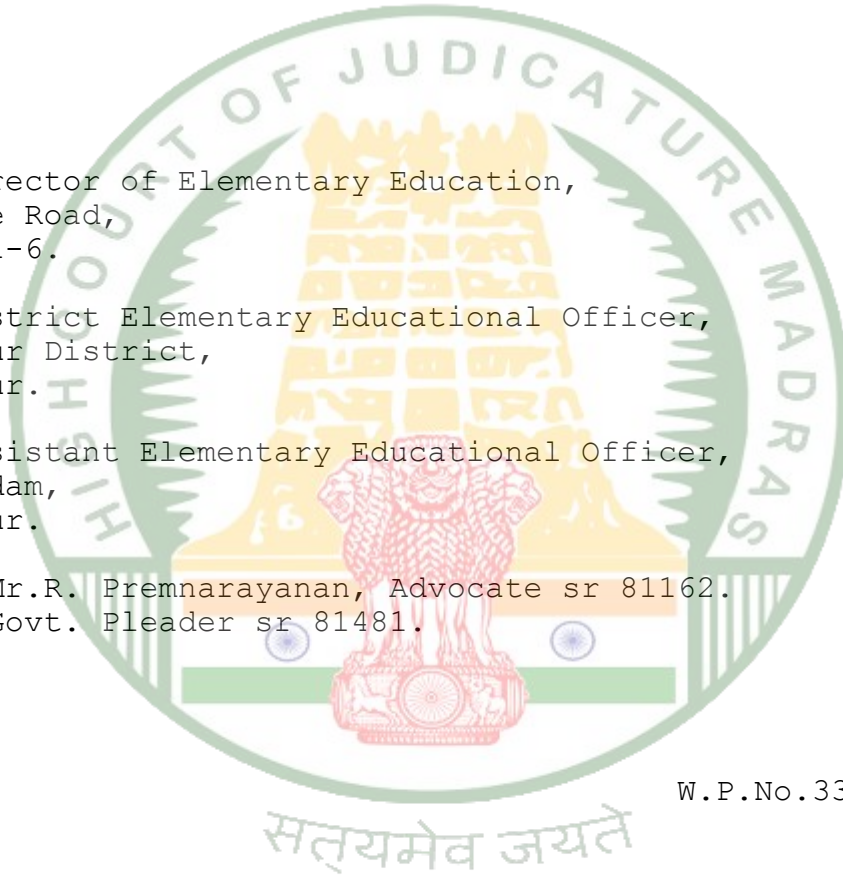
Sub-Assistant Registrar

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To

1. The Director of Elementary Education,
College Road,
Chennai-6.
2. The District Elementary Educational Officer,
Ariyalur District,
Ariyalur.
3. The Assistant Elementary Educational Officer,
Andimadam,
Ariyalur.

+1 CC to Mr.R. Premnarayanan, Advocate sr 81162.
+1 CC to Govt. Pleader sr 81481.



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LRS (CO)
SP(14/12/2017)

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