

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.34234 & 34235 of 2016 and
W.M.P.Nos.29553, 29554,
35496 & 35496 of 2016

N.Palanivelu
G.Rajaguru

..Petitioner in W.P.No.34234 of 2016
..Petitioner in W.P.No.34235 of 2016

Vs.

- 1.The Government of Tamil Nadu
rep. By the Secretary to Government
School Education Department
Fort St.George, Chennai 600 009.
- 2.The Director of Elementary Education
College Road, Nungambakkam,
Chennai 600 006.
- 3.The District Elementary Education Officer
Villupuram, Villupuram District.
..Respondents 1 to 3 in both Wps
- 4.The Assistant Elementary Education Officer
Thiruvennainallur, Villupuram Taluk and District.
.. 4th respondent in W.P.34234/2016
- 5.The Assistant Elementary Education Officer
Kanai, Villupuram Taluk and District.
.. 4th respondent in W.P.34235/2016
- 6.The Treasury Officer
Villupuram District Treasury, Villupuram.
..5th Respondent in both Wps

Prayer in W.P.34234 of 2016:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the fifth respondent proceedings in Na.Ka.No.4060/2016/E2 dated 06.07.2016 and quash the same, further directing the respondents to continuously paying the pension as fixed originally by the sanctioning authority.

Prayer in W.P.34235 of 2016:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the fifth respondent proceedings in Na.Ka.No.4060/2016/E2 dated 06.07.2016 and the consequential proceedings in Na.Ka.No.4060/2016/E2 dated 18.07.2016 and quash the same, further directing the respondents to continuously paying the pension as fixed originally by the sanctioning authority.

For Petitioners :Mr.V.S.Sivasundaram

For Respondents :Mr.K.Dhananjeyan
Spl.Government Pleader

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COMMON ORDER

Heard Mr.V.S.Sivasundaram, learned counsel appearing for the petitioners and Mr.K.Dhananjeyan, learned Special Government Pleader appearing for the respondents.

2.The petitioners have come forward with these Writ Petitions, challenging the orders of recovery dated 06.07.2016 passed by the fifth respondent.

3.On a perusal of the impugned orders of recovery, it is apparent that no notice or opportunity was provided to the writ petitioners, before issuing the orders of recovery.

4.The learned counsel appearing for the writ petitioners contended that the writ petitioners are aged about 86 years and 81 years respectively and no recovery of pension can be imposed, after a lapse of so many years. In support of the said contention, the learned counsel also produced before this Court the Judgment of the Hon'ble Supreme Court in **STATE OF PUNJAB AND ORS v. RAFIQ MASIH (WHITE WASHER) & ORS [(2015) 4 SCC 334]**, wherein it has been held that even in the case of erroneous excess payment, no recovery can be effected in respect of the retired employees. For better appreciation, the relevant paragraphs of the Judgment is extracted herein 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 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.

19. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”

In view of the Judgment rendered by the Hon'ble Supreme Court, cited supra, the orders impugned in these Writ Petitions deserve to be quashed.

5.In the result, the Writ Petitions are allowed and the proceedings of the fifth respondent both dated 06.07.2016, are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.07.2017

Index: Yes/No
Internet: Yes/No
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S.M.SUBRAMANIAM, J.,

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