

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

W.P.NO.12789 OF 2004 AND
M.P.NO.14895 OF 2004

R.Avudaithai

... Petitioner

Vs.

1. The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.
2. The Additional Assistant Elementary Educational Officer,
Kuruvikulam, Tirunelveli District.
3. The Secretary, Hindu Middle School,
Naranapuram, Chathirakondan Post,
Sankarankoil, Tirunelveli District. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order of the second respondent in Na.Ka.No.1154/A1/2003, dated 03.03.2004 and quash the same.

For Petitioner : Mr.P.Manoj Kumar

For Respondents : Mr.R.Prathap Kumar,
Additional Government Pleader

सत्यमेव जयते
O R D E R

This writ petition has been filed for issuance of a Writ of Certiorari to call for the records relating to the impugned order of the second respondent in Na.Ka.No.1154/A1/2003, dated 03.03.2004 and quash the same.

2. The writ petitioner's husband was working as Head Master at the third respondent school. He died on 04.04.2004. Just before his death, the impugned order dated 03.03.2004 came to be issued. The second respondent ordered recovery through the impugned order for holding the post of Middle School Head Master without being qualified for the same. Consequently,

fixation of pay for selection grade and special grade scale also were sought to be recovered. However, no amount was quantified in the impugned order. Aggrieved by the impugned order, the petitioner has preferred this present writ petition.

3. The record of proceedings show that the impugned order of the respondent in Na.Ka.No.1154/A1/2003, dated 03.03.2004, has been stayed and the interim stay continues till date. In the meanwhile, it appears that there were several writ petitions of similar nature i.e., against the order of recovery for holding the post without being qualified for the same, came to be filed and disposed of. One such case decided by the Madurai Bench of Madras High Court in W.P.(MD)No.7593 of 2013, dated 01.12.2016, is extracted hereunder:-

"5. Even earlier the Government had granted one time relief for such appointments and by G.O.Ms.No.97, dated 05.07.2001. This order was came to be noted in W.P.No.2725 of 1998 dated 07.11.2002 wherein the learned judge in paragraph 3 had observed as follows:-

3. The petitioner has challenged the impugned order of the third respondent directing recovery of the amount from the petitioner on the ground that the petitioner though not having the required qualification had worked as Headmistress of a Middle school and who was also paid the salary of the said post for the period for which she had worked. Learned counsel for the petitioner has submitted that subsequently, G.O.Ms.No.97 dated 05.07.2001, issued by the first respondent, has granted total regularization in such matters. Assuming that the above Government Order is not applicable, in equity, the amount which was already paid to the petitioner cannot be recovered. Even assuming that the petitioner was not eligible to be appointed as Headmistress at the relevant time only pursuant to the order passed by the third respondent, the petitioner had worked in that capacity. Since the petitioner had worked in that capacity, equity requires that the amount of salary payable for the said post should be paid. Since the amount was paid, the question of recovering the same is not permissible irrespective of the fact whether the petitioner was eligible for the higher salary or not. Accordingly, the writ petition is allowed and the impugned order is quashed.

6. In view of the fact that several writ petitions were already allowed on the above lines these two writ petitions are also allowed and the impugned order will stand set aside. However there will be no order as to costs. Consequently, connected miscellaneous petitions are closed."

4. In the instant case also the deceased employee was holding the post of Head Master and drawn the salary attached to the post. Yet another judgment of this Court in W.P.No.18810 of 2009, dated 09.08.2010, similar to the present case, the recovery imposed on that individual was set aside. It is well settled that excess payment was not paid at the instant of the employee. There is no fraudulent representation for getting excess payment. Promotion in the year 1985 was made by the educational authorities without looking into the lack of regular service required for promotion. The lapse shall not be attributed to the employee and equity requires the excess payment shall not be recovered at this distant point of time, that too after the death of the employee himself.

5. As stated supra, the excess payment was not made on the irregular, illegal and fraudulent representation of the employee concerned. The learned counsel for the petitioner further submitted that no notice was issued and the amount was not quantified.

6. Taking into consideration, the issue decided by various writ petitions by this Court, the impugned order passed by the second respondent in Na.Ka.No.1154/A1/2003, dated 03.03.2004 is set aside. The respondents are directed to settle all the terminal benefits due and payable to the deceased employee, to the petitioner, if not already settled, within a period of eight weeks from the date of receipt of a copy of this order. In the event if the amount is recovered the respondents are directed to disburse the recovered amount to the petitioner.

7. With these directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

asi/dpq

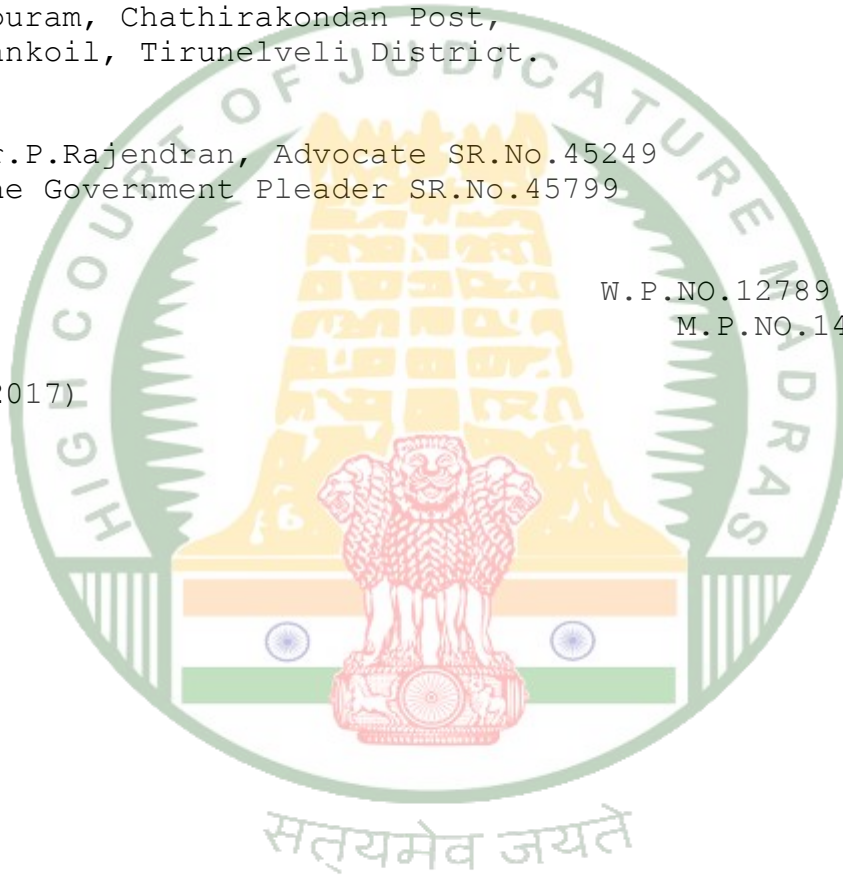
To

1. The District Elementary Educational Officer,
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2. The Additional Assistant Elementary Educational Officer,
Kuruvikulam, Tirunelveli District.
3. The Secretary, Hindu Middle School,
Naranapuram, Chathirakondan Post,
Sankarankoil, Tirunelveli District.

+lcc to Mr.P.Rajendran, Advocate SR.No.45249
+lcc to the Government Pleader SR.No.45799

W.P.NO.12789 OF 2004 AND
M.P.NO.14895 OF 2004

GJII(CO)
GN(10/07/2017)



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