

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 19.12.2018

CORAM
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.5780 of 2011
and
M.P.No.2 of 2011

1.G.Ramalingam
2.T.Kaliaperumal

...Petitioners

- Vs -

1. The State of Tamil Nadu
Represented by its Secretary to Government,
School Education [G2] Department,
Fort St.George,
Chennai-600 009.

2. The Director of Elementary Education,
D.P.I, College Road,
Chennai-600 006.

3. The Assistant Elementary Educational Officer,
Myladuthurai,
Nagapattinam District.

4. The Assistant Elementary Educational Officer,
Seppanarkoil,
Nagapattinam District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for records of the impugned orders of the 3rd respondent's in Na.Ka.No.1270/A1/2010, dated 31.03.2010 and the 4th respondent's in Na.Ka.No.1842/A3/2010 dated 30.07.2010 issued for recovery on pension and Quash the same.

For Petitioners : Mr.R.Sreedharan

For Respondents : Mr.K.Karthikeyan,
Govt. Advocate

O R D E R

The petitioners herein have preferred this writ petition challenging the impugned recovery proceedings initiated against them by the 3rd respondent in Na.Ka.No.1270/A1/2010, dated

31.03.2010 and the 4th respondent's in Na.Ka.No.1842/A3/2010, dated 20.07.2010 issued for recovery on pension and quash the same.

2. The learned counsel for the petitioners submitted that the petitioners are retired Elementary School Teacher and Head Master under the Directorate of Elementary Education. During their service, the Department has paid the benefits under the Special Grade to the petitioners. Subsequently, the Department has initiated recovery proceedings for the reason that the said amount has been wrongly paid to the petitioners. Therefore, the respondents have passed the impugned order for recovery of the said amount.

3. The learned counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334, wherein it is held that the respondents cannot recover the excess amount paid to the petitioners after the petitioners have retired from service.

4. The learned Government Advocate would submit that excess amount has been wrongly paid to the petitioners and therefore, the Department had initiated recovery proceedings to recover the excess amount paid to the petitioners. Therefore, there is no irregularity or illegality in the impugned order passed by the respondents.

5. According to the petitioners, this Court also in W.P.No.35102 of 2006 dated 15.09.2009 following the judgment of the Hon'ble Supreme Court in Syed Abdul Qadir and others v. State of Bihar and others reported in (2009) 3 SCC 475, directed the authorities concerned not to recover the excess amount paid to the employees and also directed to refund the amount already recovered from the employees.

6. Without going into the merits of the issue as to whether the petitioners have been paid excess amount and whether the same is illegal or not, in the light of the judgment of the Hon'ble Supreme Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334, wherein the Hon'ble Supreme Court has summarised 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 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.''

The petitioners come under the category of point No.2, as per paragraph 12 of the aforesaid judgment, as the petitioners herein have retired from service. After a long period, the respondents have initiated recovery proceedings.

7. It is also brought to the notice of this Court that following the judgment of the Hon'ble Supreme Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334, the State Government had also passed G.O.Ms.No.286[Finance(Pension)Department], dated 28.08.2018 regarding the procedure on recovery in appropriate cases.

8. In the light of the above cited judgment of the Hon'ble Supreme Court, the impugned order passed by the Department is liable to be quashed.

9. Hence, the impugned order passed by the respondents 3 and 4 is quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssn

To

1.The Secretary to Government,
Government of Tamil Nadu,
School Education [G2] Department,
Fort St.George,Chennai-600 009.

2. The Director of Elementary Education,
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Chennai-600 006.

3. The Assistant Elementary Educational Officer,
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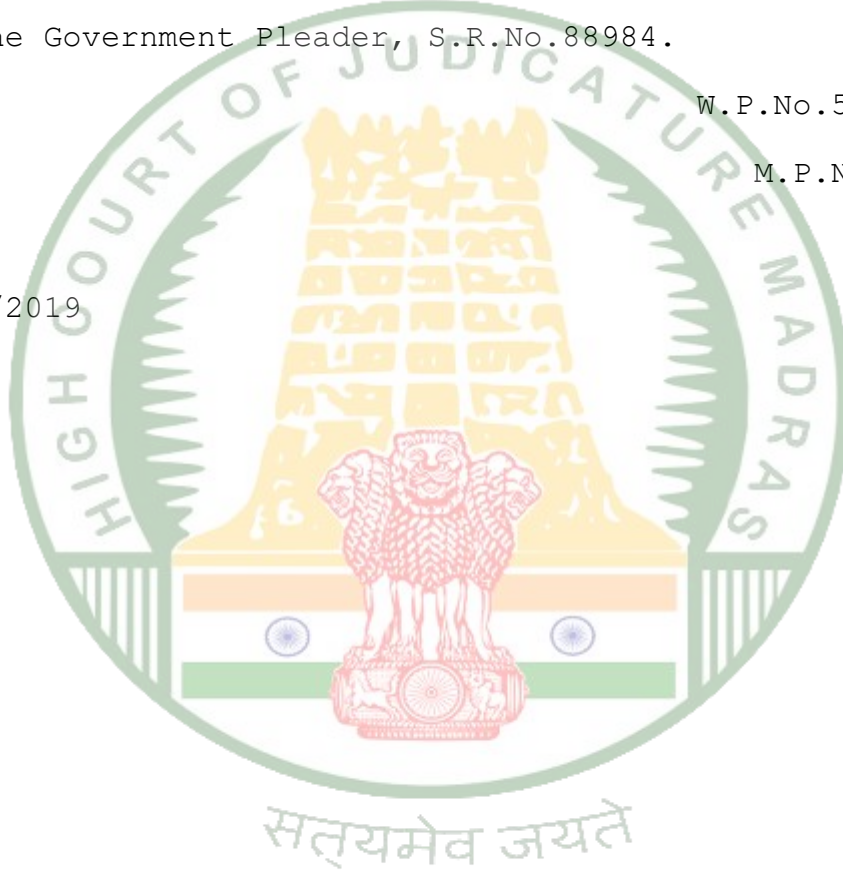
4. The Assistant Elementary Educational Officer,
Seppanarkoil,
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+lcc to the Government Pleader, S.R.No.88984.

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and
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PM(CO)

rrs 08/03/2019



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