BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.03.2018**

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)Nos.7847 to 7855 of 2013 and
MP(MD)Nos.2,2,2,2,2,2,2,2 & 2 of 2013 and
1,1,1,1,1,1,1,1 & 1 of 2015

ADHIVEERARAMAPANDIAN	: Petitioner in WP(MD)No.7847/2013
P.VIJAYALAKSHMI	: Petitioner in WP(MD)No.7848/2013
D.NELLI FLORENCE	: Petitioner in WP(MD)No.7849/2013
P.BALASARASWATHI	: Petitioner in WP(MD)No.7850/2013
S.LAKSHMITHAI	: Petitioner in WP(MD)No.7851/2013
S.SUDALAIMUTHU	: Petitioner in WP(MD)No.7852/2013
R.SEETHALAKSHMI	: Petitioner in WP(MD)No.7853/2013
M.SATHIAVATHI	: Petitioner in WP(MD)No.7854/2013
S.PANCHAVARNAM	: Petitioner in WP(MD)No.7855/2013

- Vs. -

1 THE PRINCIPAL ACCOUNTANT GENERAL,
OFFICE OF THE ACCOUNTANT GENERAL,
No.361, ANNA SALAI, CHENNAI - 600 018

2 THE DISTRICT TREASURY OFFICER,
MADURAI, MADURAI DISTRICT.

3 THE ASSISTANT TREASURY OFFICER,
USILAMPATTI,
MADURAI DISTRICT. : RESPONDENTS IN ALL WPs

Prayer in WP(MD)Nos.7847 and 7848 of 2013 :

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, in the nature of writ, calling for the records relating to the original impugned order dated 02.03.2013 & 04.03.2013 passed by the 3rd respondent and quash the same as illegal and arbitrary and pass such further or other orders.

Prayer in WP(MD)No.7849 of 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, in the nature of writ, calling for the records relating to the original impugned order in P.P.O. No.T.88964 & A 842657 dated 02.03.2013 passed by the 3rd respondent and quash the same as illegal and arbitrary and pass such further or other orders.

Prayer in WP(MD)Nos.7850 & 7851 of 2013 :

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, in the nature of writ, calling for the records relating to the original impugned order in P.P.O.Nos.606314/EDA, C177295 dated 02.03.2013 passed by the 3rd respondent and quash the same as illegal and arbitrary and pass such further or other orders.

Prayer in WP(MD)No.7852 of 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, in the nature of writ, calling for the records relating to the original impugned order dated 02.03.2013 passed by the 3rd respondent and quash the same as illegal and arbitrary and pass such further or other orders.

Prayer in WP(MD)No.7853 of 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, in the nature of writ, calling for the records relating to the original impugned order in PPO No: C 154540/ EDA dated 02.03.2013 passed by the 3rd respondent and quash the same as illegal and arbitrary and pass such further or other orders.

Prayer in WP(MD)Nos.7854 and 7855 of 2013 :

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, in the nature of writ, calling for the records relating to the original impugned order in PPO Nos.C154900/EDA, C 606032/EDA dated 02.03.2013 passed by the 3rd respondent and quash the same as illegal and arbitrary and pass such further or other orders.

For Petitioner	:	Mr.B.Vinothkumar in all WPs
For Respondent -1	:	Mr.P.Gunasekaran in all WPs
For Respondents 2 &3	:	Mr.R.Sethuraman, Special Government Pleader, in all WPs

COMMON ORDER

Since the issue involved in all these writ petitions is one and the same, they are disposed of by way of a common order.

2.The orders of recovery issued by the third respondent in respect of recovery to the writ petitioners are under challenge in these writ petitions. The writ petitioners were employed in various Schools and retired from service. Based on the audit objection, the recovery orders were issued on the ground that excess payments were paid to the writ petitioners. The alleged excess amount is sought to be recovered from the petitioners by way of installments. The learned Counsel for the writ petitioners states that the orders of recovery were issued without any show cause notice or opportunity to the writ petitioners. Thus, the recovery orders are in violation of the principles of natural justice.

3.The learned Special Government Pleader, is also unable to dispute the contentions of the petitioners that no notice or opportunity was granted before passing the impugned orders. This apart, recovery in respect of excess payment, even found granted erroneously, cannot be recovered from the pensioners. However, in respect of any mistakes in the fixation, the same shall be corrected in accordance the pay rules in force by the competent authorities. In other words, erroneous fixation can be rectified and order of recovery alone cannot be imposed.

4.This being the factum of the case, it is relevant to cite the judgment of 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 Supreme Court Cases 334*** settled by the principles in paragraph 18, which is extracted here under:

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 hereinabove 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 the 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 employes, 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.

5. The Apex Court in pragraph 18, cited supra enumerates that there is no misrepresentation on the part of the writ petitioner. Thus, the recovery is liable to set aside. It is made clear that in respect of any mistakes in the fixation, the same shall be corrected in accordance with the board proceedings and based on the pay rules in force.

6.In the present case on hand, no show cause notice or opportunity was given to the writ petitioners. Therefore, the impugned orders are in violation of the principles of natural justice. This apart, there is no misrepresentation or otherwise committed by the writ petitioners. In this view of the matter, the impugned orders in these writ petitions issued by the third respondent are quashed. If any amount had already been recovered from the writ petitioners, the respondents are directed to reimburse the same to the writ petitioners within a period of twelve weeks from the date of receipt of a copy of this order.

7.Accordingly, the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Accountant General,
   Office of the Accountant General,
   No.361, Anna Salai,
   Chennai - 600 0018.

2. The District Treasury Officer,
   Madurai,
   Madurai District.

3. The Assistant Treasury Officer,
   Usilampatti,
   Madurai District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 53641
+ 1 CC TO Mr.P.GUNASEKARAN, ADVOCATE IN SR No. 53559

DSK
TE/SV-MMS/SAR-4 : 10/04/2018 : 4P/6C

W.P(MD)Nos.7847 to 7855 of 2013
05.03.2018