

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

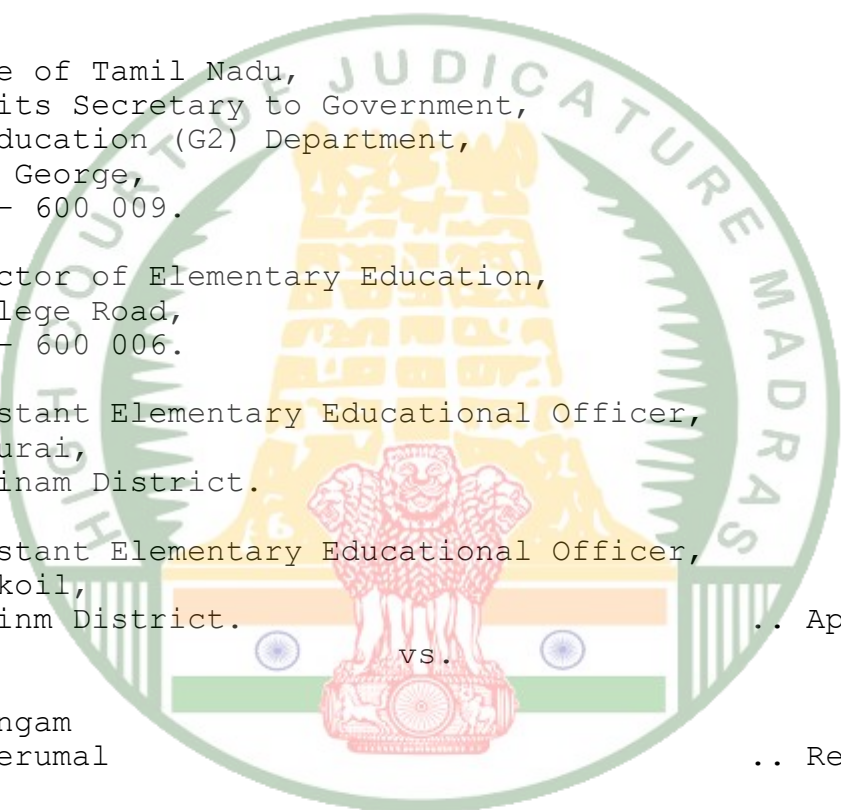
CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4081 of 2019

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- 1.The State of Tamil Nadu,  
rep. by its Secretary to Government,  
School Education (G2) Department,  
Fort St. George,  
Chennai - 600 009.
- 2.The Director of Elementary Education,  
DPI, College Road,  
Chennai - 600 006.
- 3.The Assistant Elementary Educational Officer,  
Myladuthurai,  
Nagapattinam District.
- 4.The Assistant Elementary Educational Officer,  
Seppanarkoil,  
Nagapattinam District.
- vs.
- 1.G.Ramalingam  
2.T.Kaliaperumal
- .. Appellants
- .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 19.12.2019 passed in W.P.No.5780 of 2011 on the file of this Court.

W.P.No.5780/2011:

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 3<sup>rd</sup> respondent's in Na.Ka.No.1270/A1/2010, dated 31.03.2010 and the 4<sup>th</sup> respondent's in Na.Ka.No.1842/A3/2010 dated 30.07.2010 issued for recovery on pension and Quash the same.

For Appellants

: Mr.C.Munusamy  
Spl. Govt. Pleader (Edn.)

## JUDGMENT

(Delivered by SUBRAMONIUM PRASAD, J.)

Challenge in the instant writ appeal is to the judgment and order dated 19.12.2018 passed in W.P.No.5780 of 2011.

2. The respondents/writ petitioners were working as Secondary Grade Teachers and were promoted as Elementary School Headmasters. The respondents/writ petitioners reached the age of superannuation on 30.09.2000 and 31.05.2005 respectively. After their retirement, the Government had issued G.O.Ms.No.207, School Education (G2) Department, dated 30.09.2008 and revised the pay by granting Selection Grade/Special Grade to persons like the respondents/writ petitioners. The benefit given by G.O.Ms.No.207 was sought to be withdrawn by the orders dated 31.03.2010 and 30.07.2010 respectively, which were impugned in the instant writ petition.

3. The learned Single Judge, by the order impugned herein, has placed reliance on the judgment of the Hon'ble Supreme Court in the case of State of Punjab and others v. Rafiq Masih (White Washer), reported in (2015) 4 SCC 334, wherein the Hon'ble Supreme Court has stated that recoveries from employees of Class III and IV i.e., Group C and Group D services cannot be made unless payments were received by the employees by practising a fraud or by means of any misrepresentation. Paragraph 18 of the said judgment succinctly lays down the principles when recovery can be made and the same is gainfully extracted herein 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 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."

4. The judgment of the learned Single Judge has been assailed in the instant writ appeal contending that the respondents/writ petitioners were not entitled to the benefit of G.O.Ms.No.207. We do not propose to enter into the controversy as to whether the respondents/writ petitioners are entitled to the benefit of G.O.Ms.No.207 or not, for the simple reason that the learned Single Judge has only restrained the State Government from recovering the money already paid to the respondents/writ petitioners herein.

5. In view of the above, this Court does not find any reason to interfere with the directions of the learned Single Judge and the writ appeal stands dismissed. No costs. Consequently, C.M.P.no.25519 of 2019 is closed.

सत्यमेव जयते

s/d-

Assistant Registrar(CS V)

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Sub-Assistant Registrar

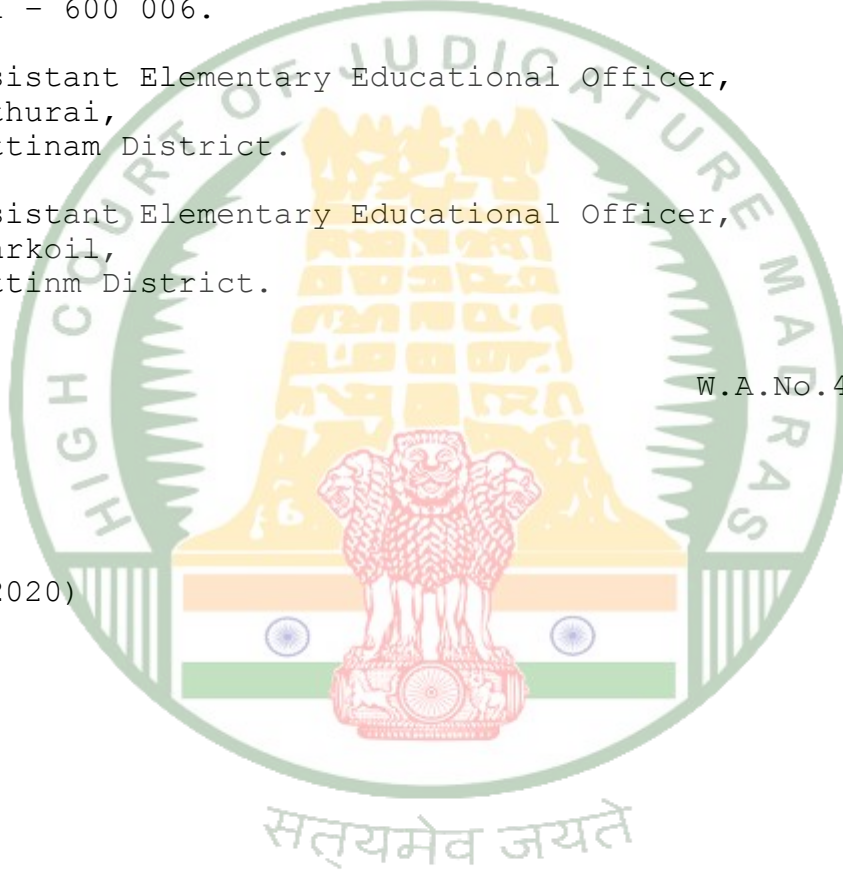
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To

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W.A.No.4081 of 2019

PVS (CO)  
SP (06/01/2020)



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