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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

WRIT PETITION NOS.20217 & 20220 OF 2021
AND

W.M.P.NOS.21473 & 21475 OF 2021

(Through Video Conferencing)

U.K.Siddu Reddy ...Petitioner in W.P.No.20217 of 2021

P.Nainamalai ...Petitioner in W.P.No.20220 of 2021

Vs.

1.The Government of Tamil Nadu

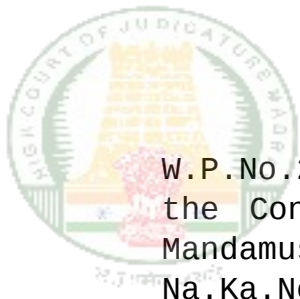
Rep. By its Principal Secretary and Commissioner of
Treasuries and Account,
Integrated Office Complex for Finance Department,
Veterinary Hospital Complex, Nandanam,
Anna Salai, Chennai - 35.

2.The District Treasury Officer,
O/o. District Treasury,
Erode District.

3.The Assistant Treasury Officer,
Sub-Treasury Office,
Anthiyur, Erode District.

...Respondents in both WPs

W.P.No.20217 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the 3rd Respondent in Na.Ka.No.Nil/2021/A1 dated 05.05.2021 and quash the same as illegal and arbitrary and directing the respondents to revised the petitioner pension on the basis of the minimum pension as per the 2(iv) of G.O.Ms.No.235, Finance Department, dated 01.06.2009.



W.P.No.20220 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the 3rd Respondent in Na.Ka.No.Nil/2021/A1 dated 05.05.2021 and quash the same as illegal and arbitrary and directing the respondents to revised the petitioner pension on the basis of the minimum pension as per the 2(iv) of G.O.Ms.No.235, Finance Department, dated 01.06.2009.

For Petitioner : Mr.K.Jayaraman
(in both writ petitions)

For Respondents : Mr.LSM Hasan Fizal
Government Advocate for R1 to R3

C O M M O N O R D E R

The impugned order dated 05.05.2021 seeks to recover a sum of Rs.2,28,706/- for a period of 30 months at the rate of Rs.7,600/-. It proceeds on the assumption that the basic pension of the Petitioners was wrongly fixed at Rs.10,650/- instead of Rs.9,575/-, as a result of which between 01.01.2006 to 31.12.2015, the Petitioners ended getting higher pension.

2. Appearing on behalf of the Petitioners, the learned counsel appearing for the Petitioners submit that the demand confirmed in the impugned order is contrary to the principles of natural justice and inasmuch as not only the Petitioners have retired from services but also it has been passed without issuing any show cause notice to the Petitioners.

3. The learned counsel for the Petitioners further submits that the impugned recovery proceedings re-fixing and down scaling of the pension of the Petitioners from Rs.27,380/- to Rs.25,640/- is contrary to the decision of the Hon'ble Supreme Court in State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334, and therefore the impugned recovery cannot be sustained. Attention was drawn to paragraph 18 from the said decision which reads as 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



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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 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. Appearing on behalf of the Respondents, the learned Government Advocate submits that the Petitioners were working as a P.T. Master and therefore the decision of the Hon'ble Supreme Court in State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others will not apply as the petitioners as they are neither a Class III nor Class IV employees of the Government. It is further submitted that the benefit of G.O.Ms.No.216, Finance (Pay Cell) Department dated 22.03.1993 was wrongly extended to the Petitioners as a result of which, the Petitioners ended getting higher pension amount during the



aforesaid period at Rs.27,380/- p.m. instead of Rs.25,640/- p.m. with effect from 01.01.2006 to 31.12.2015.

5. Perused the impugned order and heard the arguments of the learned counsel for the petitioner and the respondents and also considered the decision of the Hon'ble Supreme Court in White Washer case.

6. The impugned recovery proceedings seeking to recover a sum of Rs.2,28,706/- is admittedly without issue of any notice to the Petitioners. The Petitioners have retired as the Physical Education Teacher way back in 1994 and 1996. Therefore, the recovery without a proper show cause notice cannot be countenanced. To that extent, the impugned order seeking to recover a sum of Rs.2,28,706/- from each of stands quashed. However whether the Petitioners are entitled to higher pension amount as per the reasons contained in the impugned order has to be determined by the Respondents after a proper adjudication is made on the same.

7. Considering the above facts and circumstances of the case, this Court is of the view that the impugned order which stands quashed by this order shall be treated as a show cause notice issued to the petitioners on 05.05.2021 for re-fixation of pension prospectively. The Petitioners may give a reply to the same to the Respondents within a period of 30 dates from the date of receipt of a copy of this order. The Respondents shall pass appropriate orders on merits and in accordance with law and prevailing guidelines. In case, the Petitioners' pension have been wrongly fixed, the Respondents are entitled to recover the amount paid in excess from the pension that is payable from June, 2021.

8. This Writ Petition is accordingly disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To

1.The Principal Secretary and Commissioner of
Treasuries and Account,
The Government of Tamil Nadu
Integrated Office Complex for Finance Department,
Veterinary Hospital Complex, Nandanam,
Anna Salai, Chennai - 35.

2.The District Treasury Officer,
O/o. District Treasury,
Erode District.

3.The Assistant Treasury Officer,
Sub-Treasury Office,
Anthiyur, Erode District.

+2ccs to M/s.K.Jayaraman, Advocate SR.No.49393, 49394

+1cc to the Government Pleader SR.No.49015

W.P.Nos.20217 & 20220 of 2021

AK(CO)
RVM(22/10/2021)