



W.P.No.24667 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.24667 of 2014

and

M.P.No.1 of 2014

R.Anu

...Petitioner

Vs

1.The Director of School Education,
College Road, DPI Compound,
Chennai - 6.

2.The Chief Educational Office,
Erode, Erode District.

3.The Headmistress,
Government Girls Higher Secondary School,
Paneerselvam Park, Erode - 1.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order dated 14.07.2014 passed by the 3rd respondent in her proceedings Na.Ka.No.192/A/2014 and quash the same.



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For Petitioner : Mr.Ramadoss
for Mr.P.Sivakumar

For Respondents : Mr.C.Sathish, Govt. Advocate

ORDER

Heard Mr.Ramadoss, learned counsel appearing for the petitioner and Mr.C.Sathish, learned Government Advocate for the respondents.

2. On the ground of audit objections, it is claimed by the third respondent in the impugned order dated 14.07.2014 that the incentive increments paid to the petitioner in the year 2009, for having obtained the higher degree of M.C.A., is now sought to be recovered.

3. The Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***, has categorically held that recovery of any excess amount wrongfully made by the employer in excess of five years, is impermissible in law. The relevant portion of the order reads as follows:-

“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 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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from 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*



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extent, as would far outweigh the equitable balance of the employer's right to recover.”

3. In the present case, the petitioner herein has been receiving the alleged excess incentive increments from the year 2009 and the impugned recovery order has been issued in the year 2014, after a period of five years. By applying the ratio laid down by the Hon'ble Supreme Court in the *White Washer's case* (supra), such an order of recovery passed by the third respondent, cannot be sustained.

4. In the light of the above observations, the impugned order passed by the third respondent dated 14.07.2014 is quashed. In case any excess amount has been recovered from the petitioner, pursuant to the impugned order, the third respondent herein shall forthwith refund the same to the petitioner, within a period of 6 weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.10.2022

Index:Yes/No
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M.S.RAMESH,J.

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