



W.P.(MD)No.4314 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

**W.P.(MD)No.4314 of 2014
and
M.P.(MD)Nos.2 and 3 of 2014**

1. K.Veerasekaran (deceased)

2. V.Padmavathi

.. Petitioners

(2nd petitioner substituted vide Court order dated 28.10.2021
in W.M.P.(MD)No.2725 of 2020 in W.P.(MD)No.4314 of
2014 by SSSRJ)

Vs.

1. The Chief Educational Officer,
Pudukkottai District.

2. The Headmaster,
Government Higher Secondary School,
Chidhambaraviduthi,
Pudukkottai District.

3. The Regional Accounts Officer (Audit),
School Education,
Madurai.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the third respondent in his proceedings in Na.Ka.No.3527/A8/13, dated 09.12.2013 and the consequential order passed by the second respondent in his proceedings in Na.Ka.No.16/2014 dated 08.02.2014 and quash the same and direct the respondents to allow the petitioner to continue to have the same benefit.

For Petitioners : Mr.V.Panneer Selvam
for M/s.C.S.Associates

For Respondents : Mr.V.Om Prakash
Government Advocate

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the third respondent vide proceedings in Na.Ka.No.3527/A8/13, dated 09.12.2013 and consequential order passed by the second respondent vide proceedings in Na.Ka.No.16/2014 dated 08.02.2014 and consequently, direct the respondents to allow the second petitioner to continue to have the same benefit.



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2. The learned counsel for the petitioners submitted that the first petitioner was appointed as Physical Education Teacher on 08.06.1998. The qualification for the post of Physical Education Teacher is B.P.Ed., (Bachelor of Physical Education), but the first petitioner possessed M.P.Ed. Therefore, he is entitled to get incentive increment. The first petitioner also passed M.Phil., in the year 2008 and he is entitled to get incentive increment for M.Phil. He was sanctioned two incentive increments (i.e.,) one for M.P.Ed., qualification and another for M.Phil., qualification. The second respondent has passed an order of recovery on 08.02.2014 on the basis of the audit objection made by the third respondent on 09.12.2013. The impugned order passed by the second respondent, after a period of five years, is impermissible.

3. He further submitted that the Hon'ble Supreme Court of India in the case of *State of Punjab and others etc., vs. Rafiq Masih (White Washer)* reported in *(2015) 4 SCC 334*, has held that recovery of excess payments, owing to the mistake of the employer, cannot be recovered from a pensioner, that too after a period of five years. The relevant portion of the judgment is extracted hereunder:



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"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, wherein recoveries by 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;



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(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 impugned proceedings issued in the year 2014 for recovery of excess payment made, in the considered view of this Court, is impermissible in the light of the pronouncement of the Hon'ble Supreme Court of India in White Washer's case. During the pendency of the Writ Petition, the first petitioner died and his wife, namely, Padmavathi is impleaded as second petitioner. The first petitioner is entitled for incentive increment till his death and thereafter his wife is entitled for the family pension taking into consideration the advance increment granted to the deceased first petitioner.

5. In that view of the matter, this Writ Petition is allowed and both the impugned orders are quashed. The respondents are directed to grant the



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family pension to the second petitioner herein. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

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G.CHANDRASEKHARAN, J.

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