



WEB COPY



W.P.Nos.12238 & 13551 of 2022 and 1855 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.12238 of 2022 and W.M.P.Nos.11690 & 11693 of 2022
and
W.P.No.13551 of 2022 and W.M.P.No.12754 of 2022
and
W.P.No.1855 of 2023 and W.M.P.No.1957 of 2023

W.P.No.12238 of 2022:

R.Gomathi

... Petitioner

Versus

- 1.The Director of School Education,
School Education Department,
Chennai.
- 2.The Chief Educational Officer,
Villupuram District,
Villupuram.
- 3.The Zonal Account Officer, (Audit),
School Education Department,
Coimbatore.
- 4.The Head Master,
Angavai Sangavi Girls Higher Secondary School,
Tirukovillur,
Kallakurichi.
- 5.The Head Master,
Vallalar Government Higher Secondary School,
Kandamangalam,
Villupuram.



W.P.Nos.12238 & 13551 of 2022 and 1855 of 2023

6.The Accountant General (A & E),
Office of the Accountant General (A & E),
No.361, Anna Salai, Teynampet,
Chennai-600 018.

... Respondents

W.P.No.13551 of 2022:

S.Amutha

... Petitioner

Versus

1.The Director of School Education,
School Education Department,
Chennai.

2.The Chief Educational Officer,
Dharmapuri District,
Dharmapuri.

3.The Zonal Account Officer, (Audits),
School Education Department,
Coimbatore.

4.The Head Master,
Thiyagi Subramani Siva Government Boys Higher Secondary School,
Papparapatti,
Dharmapuri District.

5.The Accountant General (A & E),
Office of the Accountant General (A & E),
No.361, Anna Salai, Teynampet,
Chennai-600 018.

... Respondents

W.P.No.1855 of 2023:

A.Nethaji

... Petitioner

Versus

1.The Director of School Education,
School Education Department,
Chennai.



W.P.Nos.12238 & 13551 of 2022 and 1855 of 2023

2.The Chief Educational Officer,
Dharmapuri District,
Dharmapuri.

3.The Zonal Account Officer, (Audits),
School Education Department,
Coimbatore.

4.The Head Master,
Government Higher Secondary School,
B-Agraharam,
B-Agraharam Post,
Dharmapuri District – 636 813.

5.The Accountant General (A & E),
Office of the Accountant General (A & E),
No.361, Anna Salai, Teynampet,
Chennai-600 018.

... Respondents

PRAYER in W.P.No.12238 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of writ, call for the records of the 4th respondent in his proceeding in Na.Ka.No.145/2021 dated 17.08.2021 and quash the same.

PRAYER in W.P.No.13551 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of writ, call for the records of the 4th respondent in his proceeding in Na.Ka.No.87/2022 dated 10.05.2022 and quash the same.

PRAYER in W.P.No.1855 of 2023: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of writ, call for the records of the 4th respondent in his proceeding in Na.Ka.No.74/2022 dated 01.11.2022 and quash the same.



W.P.Nos.12238 & 13551 of 2022 and 1855 of 2023

In W.P.No.12238 of 2022:

For Petitioner : Mr.A.Ilayaperumal
For R1 to R3 : Mr.S.Prabhakaran,
Government Advocate
For R4 & R5 : No Appearance
For R6 : Mr.S.Balaji

In W.P.No.13551 of 2022:

For Petitioner : Mr.A.Ilayaperumal

For R1 to R3 : Mr.S.Prabhakaran,
Government Advocate
For R4 : No Appearance
For R5 : Mr.S.Balaji

In W.P.No.1855 of 2022:

For Petitioner : Mr.A.Ilayaperumal
For R1 to R4 : Mr.S.Prabhakaran,
Government Advocate
For R5 : Mr.S.Balaji

COMMON ORDER

Challenging the recovery orders, dated 17.08.2021, 10.05.2022 and 01.11.2022 in Na.Ka.Nos.145/2021, 87 & 74 of 2022 passed by the 4th respondent respectively, these Writ Petitions have been filed.

2.The Writ Petitioners were given two sets of incentive increments from the date of their appointment for possessing higher qualifications. Subsequently, G.O.Ms.No.177 School Education Pa.Ka.5(2) Department,



dated 13.10.2016 has been passed holding that the petitioners are not entitled for two sets incentive increments. Hence, the above said recovery orders have been passed, which are put in challenge in these Writ Petitions.

3.It is relevant to note that the incentives have been paid to the petitioners in the year 2010 and the above said Government Order has been passed stopping further incentive increment in the year 2016 and the recovery proceedings have been passed in the years 2021 and 2022, that is, after five years. Now, the law has been settled that if any payment is made, even assuming wrong payment is made, the same cannot be recovered in excess of five years, as per the dictum of the Hon'ble Apex Court in the case of ***“State of Punjab and others Versus Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334***” wherein it had held 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:



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(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. In such view of the matter, the recovery orders, dated 17.08.2021, 10.05.2022 and 01.11.2022 in Na.Ka.Nos.145/2021, 87 & 74 of 2022 passed by the 4th respondent stand quashed. Accordingly, these Writ Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

19.07.2023

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Index : Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking Order/Non-Speaking Order

To

- 1.The Director of School Education,
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N.SATHISH KUMAR, J.

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B-Agraharam Post,
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