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W.P.No.34332 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.34332 of 2019
and W.M.P.Nos.34996 & 34998 of 2019 & 11674 of 2020

A. Paul Peter (Deceased)

1.Mrs.Anna Mary

2.Mr.Santhosh

3.Master Kishore

Rep. by his mother and
natural guardian (1st petitioner)

... Petitioners

*[Petitioners 1 to 3 are substituted as the legal heirs of the deceased A. Paul Peter,
as per the order of this Court dated 24.01.2023 in WMP.No.1618/2023]*

Vs.

1.The Director of School Education,
Chennai – 600 006.

2.The District Educational Officer,
Bhavani, Erode District.

3.The Correspondent,
St. Sebastian's Aided High School,
Andiyur Taluk,
Erode District – 638 505.

4.The Regional Accounts Officer (Auditing),
School Education Department,
Coimbatore.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent made in Na.Ka.No.2773/A3/2019 dated 21.11.2019 and quash the same and consequently direct the respondents to continue to pay at the existing fixation of pay and not to recovering the alleged excess amount paid to the petitioner.

For Petitioner : Mrs.G. Selvi George

For Respondents : Mr.M. Shajahan,
Special Government Pleader [R1, R2 & R4]
Mr.R. Balaraman [R3]

ORDER

The deceased employee (petitioner) herein was appointed as Secondary Grade Teacher in the third respondent/School on 01.11.1996. He was paid a salary for the post of a Secondary Grade Teacher. As per the Government Order in G.O.Ms.No.155 School Education (D2) Department dated 03.10.2002, the teachers who were appointed prior to 19.05.1998 in B.Ed qualification, were required to undergo one month training in Child Psychology and after completion of training, the appointments would be approved. The deceased employee had completed the Child Psychology Training between 02.05.2003 to 31.05.2003. Through the impugned order



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dated 21.11.2019, the second respondent herein, has now sought for recovery of the alleged excess payment of the salary to the tune of Rs.13,32,180/- for the period between 01.04.2004 to 01.01.2016. In the same order, it was stated that, as per the deceased employee's revised pay scale, he would be entitled for monetary benefits from 01.10.2017. Challenging the said order, the present Writ Petition has been filed.

2. 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 from a retired employee, particularly when the mistake of excess payment was on the part of the employer, 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:



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

3. Likewise, in the case of '*The State of Tamil Nadu, Education Department & others Vs. Pallivasal Primary School*' reported in '*2004-2-L.W 38*' passed by the Hon'ble Division Bench of this Court, it has been



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held as follows:-

... *“There is no dispute about the fact that these persons had actually worked. Salary paid to persons who had actually rendered service cannot be regarded as amount paid as gratis. The salary that had been paid to them during that period when they were actually teaching, even though without the requisite qualifications, in our view, is not an amount which they should be called upon to repay. Directing such persons to repay huge amounts, huge amounts because the entire salary paid over a period of nearly nine years would amount to inasmuch as over five lakhs of rupees per person, would cause untold hardship to such teachers. We, therefore, set aside that part of the Government Order namely sub-para (vii) of Para 3 which directs recovery from these teachers...”*

4. In view of the law laid down by the Hon'ble Supreme Court in ***White Washer's case (supra)***, as well as by the Hon'ble Division Bench of this Court in the case of ***'The State of Tamil Nadu, Education Department & others Vs. Pallivasal Primary School'***, the action initiated by the second respondent for recovering the amount, cannot be sustained. Since the entire



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proceedings is illegal, the second respondent is bound to repay the aforesaid amount, together with interest, if already recovered.

5. In the light of the above observations, the impugned order dated 21.11.2019, insofar as it orders for recovery of the excess payment is concerned, is quashed. Consequently, there shall be a direction to the second respondent to forthwith refund the whole or any portion of the amount of Rs.13,32,180/-, if recovered. The second respondent shall endeavour to pass such orders of refund, atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

6. Accordingly, the Writ Petition stands partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.01.2023

(2/4)

Speaking/Non-speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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To

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M.S.RAMESH,J.

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