



W.P(MD)No.16530 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 12.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16530 of 2020

and

W.M.P.(MD)No.13823 of 2020

S.Sheela Ramani

... Petitioner

Vs.

1.The Principal Accountant General,
(Accounts & Entitlement),
No.361, Anna Salai,
Chennai – 18.

2.The Director Elementary Education,
DPI Campus, College Road,
Chennai – 600 0006.

3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent in P11/2/11126046/ADK dated 12.06.2019 and consequential impugned order passed by the 3rd respondent in Na.Ka.No.5370/A2/2019 dated --.07.2019 and the impugned order



W.P(MD)No.16530 of 2020

passed by the 1st respondent in P10/11026607/7/R1026607 dated 23.08.2019, and consequential order passed by the 3rd respondent in Na.Ka.No.7617/A4/2019 dated 06.11.2019 and quash the same as illegal and consequently direct the respondents to disburse the entire retirement and pensionary benefits to the petitioner after calculating the petitioner's last drawn pay as Rs.92,100/- (Rupees Ninety Two Thousand and One Hundred Only) and consequently direct the respondents to pay back the recovered amount of Rs.6,59,254/- (Rupees Six Lakhs Fifty Nine Thousand Two Hundred and Fifty Four) to the petitioner with interest, which was recovered based on the impugned orders, within a time framed by this Court.

For Petitioner : Mr.C.Kishore

For Respondents : Mr.P.Gunasekaran for R1.

Senior Panel Counsel for R1.

Mr.N.Satheesh Kumar,

Addl. Government Pleader for R2 & R3.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was appointed as Secondary Grade Teacher on 08.03.1984. She was awarded selection grade in the year 1994 and



W.P(MD)No.16530 of 2020

special grade in the year 2004. She was promoted as Primary School Headmistress on 14.09.2004. The petitioner's grade pay was fixed at Rs.5,400/-. She was then promoted as Middle School Headmistress on 01.08.2005. She was then transferred as Assistant Elementary Officer. The petitioner retired from service on 31.05.2019. At this stage, objection was raised by the first respondent that the grade pay in the post of Middle School Headmistress was erroneously fixed. According to the first respondent, it should have been Rs.4,700/- and not Rs.5,400/-. According to the first respondent, the excess amount was paid to the petitioner. The petitioner was called upon to remit a sum of Rs.6,59,254/-. The petitioner also duly remitted the same. Thereafter, proceedings dated 06.11.2019 issued by the third respondent was put to challenge in this writ petition.

3.The respondents have filed counter affidavit and I have been taken through its contents by the learned standing counsel.

4.After hearing the learned counsel on either side, I am more than satisfied that the impugned order is bad for two reasons. (a) Clear



W.P(MD)No.16530 of 2020

violation of principles of natural justice. (b) Recovery from a retired employee is impermissible in law. The Hon'ble Apex Court in the decision reported in **(2015) 4 SCC 334 (State Of Punjab & Ors vs Rafiq Masih (White Washer) and Others)** held as follows:-

“12. 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.



W.P(MD)No.16530 of 2020

(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.”

5. Therefore, the petitioner could not have been called upon to remit the excess amount. The respondents are therefore directed to refund the said amount to the petitioner of course without interest. As regards the re-fixation of the petitioner's pension, after due notice to the petitioner, the same shall be finalized on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

6. The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.16530 of 2020

G.R.SWAMINATHAN, J.

ias

To:-

- 1.The Director Elementary Education,
DPI Campus, College Road,
Chennai – 600 0006.
- 2.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.

W.P(MD)No.16530 of 2020

12.04.2023