



W.P.No.19027 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

W.P.No.19027 of 2011

&

M.P.No.2 of 2011

S.Krithivasan

S/o.Thiru.G.Srinivasan

...Petitioner

Vs

1. The State of Tamil Nadu rep. by
its Secretary to Government
School Education (G2) Department
Fort St.George
Chennai - 600 009

2. The Director of Elementary Education
D.P.I, College Road
Chennai - 600 006

3. The Assistant Elementary Educational Officer
Kuttalam Union
Nagapattinam District

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the impugned orders of the 3rd respondent in Na.Ka.No.2117/A1/2010 dated 11.10.2010 issued on the orders of recovery on pension paid and quash the same.

For Petitioner : Mr.R.Sreedharan



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For Respondents : Mr.C.Jayaprakash
Govt. Advocate for R1 to R3

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ORDER

This writ petition is filed challenging the orders of third respondent dated 11.10.2010 issued for recovering a sum of Rs.96,678/- towards the excess payments alleged to have been made for the period from 09/98 to 04.08.2003.

2. Heard Mr.R.Sreedharan, learned counsel for the petitioner and Mr.C.Jayaprakash, learned Government Advocate for the respondents.

3. The petitioner, who had worked as the Headmaster in the Government Primary School, Malaikudi, Kuttalam Union, Nagai District attained Superannuation on 05.08.2003. Pursuant to his retirement, the impugned order dated 11.10.2010 came to be issued for recovering a sum of Rs.96,678/- on the ground that there has been some mistake committed in respect of granting the Selection Grade/Special Grade, due to which this excess payment for the period from 03.07.1998 to 05.08.2003 has been made.

4. The learned counsel appearing for the petitioner contended that



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when the payments have been made only based on the calculations made by the respondents, for which the petitioner was entitled to in view of the prevailing Government Orders particularly in respect of awarding Selection Grade/ Special Grade, the impugned order by which recovery is sought to be made for the excess payments made for no fault of the petitioner cannot be sustained and further the petitioner was not issued with any notice or given an opportunity prior to the passing of the impugned order.

5. The learned Government Advocate appearing for the respondents fairly submitted that the impugned order had been passed in respect of the excess payment made for the period from 03.07.1998 to 05.08.2003, after the petitioner had retired from service on 04.08.2003 itself.

6. As far as the recovery sought to be made from the petitioner pursuant to the impugned order is concerned, the Hon'ble Supreme Court in *State of Punjab and Others Vs. Rafiq Masih (White Washer) and others* reported in (2015) 4 SCC 334 held that any recovery from the employee who had retired and also any recovery for wrong payments



made which is beyond the period of five years is impermissible. In this regard, it is useful to extract paragraph 18 of **White Washer** case (cited supra), which 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 extent, as would far outweigh the equitable balance of the employer's right to recover."



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7. Admittedly, in this case, the petitioner had attained superannuation as early as on 04.08.2003 and the impugned order has been passed on 11.10.2010 for recovering a sum of Rs.96,678/- on the ground that wrong calculation has been made by them and above excess payment has been made for the period between 09/98 to 04.08.2003.

8. When the respondents had made the payments based on their own calculation and not on the basis of any misrepresentation on the part of the petitioner, the case of the petitioner is squarely covered by the decision of the Hon'ble Supreme Court in *White Washer* case. Since on the date of impugned order for recovery of the excess payment made, the petitioner had already attained superannuation and also the period from 09/98 to 04.08.2003 for which the recovery is sought to be made is beyond the period of 5 years, the same is impermissible particularly in view of clause (ii) and (iii) of Paragraph 18 of *White Washer* case (cited supra). Hence, the impugned order issued for recovery of excess payment made cannot be sustained.

Accordingly, this writ petition is allowed and the impugned dated 11.10.2010 is set aside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.



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Index: Yes
Non-speaking order
Neutral Citation : No

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