



W.P.No.31043 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.31043 of 2014

and

MP.Nos.1 & 2 of 2014

R.Nagasamy

...Petitioner

Vs.

1.The State of Tamil Nadu rep by its
Secretary to Government,
School Education Department,
Fort. St. George,
Chennai – 600 009.

2.The Director Elementary Education
DPI Compound,
College Road,
Chennai – 600 006.

3.The Assistant Elementary Educational Officer,
Panaimaratthupatti Union
Salem District.

4.The Principal Accountant General (Accounts & Entitlements)
O/o the Principal Accountant General (Accounts & Entitlements)
361, Anna Salai,
Chennai – 600 018.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, to



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issue a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings of the fourth respondent in No.P19/1/1190870/Rev/13-14/ADK dated 02.01.2014 and the impugned order of recovery passed by the third respondent in Na.Ka.No.1097/A1/2013 dated 17.11.2014.

For Petitioner : Mr.V.Ravikumar
For Respondents : Mr.KH.Ravikumar
Government Advocate

ORDER

Through the impugned proceedings dated 17.11.2014, an amount of Rs.2,93,448/- is sought to be recovered by the 3rd respondent, purportedly basing upon the communication issued by the 4th respondent in his letter No.P19/1/1190870/Rev/13-14/ADK dated 02.01.2014.

2. As seen from the materials on record, it is pursuant to an order passed in WP.Nos.29644 and 29645 of 2003 passed by learned Division Bench of this Court, the Government issued G.O.Ms.No.179 School Education Department dated 06.09.2013, extending the benefit of selection grade and special grade to the petitioner and others and accordingly, the pay of the petitioner was refixed. The said benefit conferred upon the petitioner in terms of G.O.Ms.No.179 School Education Department dated 06.09.2013 and re-fixation of pay done through proceedings dated 07.10.2013 vide proceedings in Na.Ka.No.1097/A1/2013 is sought to be taken away by respondent No.3 by



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passing the impugned order. Neither the 3rd respondent nor the 4th respondent had chosen to put the petitioner on notice before issuing the impugned proceedings dated 17.11.2014 or letter dated 02.01.2014. Aggrieved by the said proceedings dated 17.11.2014 and letter dated 02.01.2014, the petitioner approached this Court by filing the present writ petition.

3. Learned counsel for the petitioner, mainly contended that the recovery amounts from the petitioner who retired from service as early as in the year 2005 cannot be affected under any circumstances by placing reliance on the decision of Hon'ble Apex Court in *State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors.* reported in (2015) 4 SCC 334. He also further contended that the impugned orders came to be issued without following the principles of natural justice and therefore, they cannot be allowed to stand.

4. On the other hand, learned Government Advocate submitted that the benefits which is now sought to be withdrawn from the petitioner is rightly being done by the respondents, as the petitioner is not entitled to such benefits in terms of relevant provisions.



5. This Court has carefully considered the submissions made on either side and also perused the entire materials available on record.

6. No doubt, the recovery of the excess amounts paid to the employees who retired from service is now governed by the settled legal principles laid down by the Hon'ble Apex Court in ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors.*** reported in (2015) 4 SCC 334, wherein the Hon'ble Apex Court in para 18 held as under:-

“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:

(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.”

7. Then coming to the contention of learned counsel for the petitioner that the impugned orders came to be issued without following the principles of natural justice is concerned, a bare perusal of the proceedings dated 17.11.2014 and the letter dated 02.01.2014 itself discloses that the same were issued by the respondent unilaterally without putting the petitioner on notice and without affording the petitioner any opportunity before issuance of proceedings. Therefore, the impugned proceedings dated 02.01.2014 and 17.11.2014 cannot



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be sustained.

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8. Even if the respondent No.3 intends to take any further action pursuant to letter dated 02.01.2014 of respondent No.4, it is obligatory on the part of the respondent No.3 to afford an opportunity to the petitioner and then take further steps either to refix the pay or to order for recovery. As, admittedly no opportunity was afforded to the petitioner, the impugned proceedings dated 17.11.2014 and 02.01.2014 cannot be sustained under Law. The communication dated 02.01.2014 is only an internal communication between the respondents though a copy of the same was marked to the petitioner. Hence, in case if the respondent No.3 intends to place reliance on letter dated 02.01.2014 and take any further action, the respondent shall give reasonable opportunity to the petitioner and take a decision. However, if any step or action is taken by the 3rd respondent in future, he shall keep in mind that the benefit that is conferred on the petitioner in terms of G.O.Ms.No.179 School Education Department dated 06.09.2013 shall not taken away by passing any orders so long the said Government order is in force. So also the respondent No.3 shall strictly apply the law laid down by the Hon'ble Apex Court in ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors.*** reported in (2015) 4 SCC 334, while



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passing any further orders.

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9. Accordingly, the respondents are directed to refund the amounts if any recovered from the petitioner pursuant to impugned orders as expeditiously as possible at any rate within a period of eight (8) weeks from the date of receipt of copy of this order. In the result, this writ petition stands allowed. No costs. Connected Miscellaneous Petitions are closed.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
NST

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7/9



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MUMMINENI SUDHEER KUMAR,J.

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