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W.P.No.26937 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM

THE HONOURABLE MR.JUSTICE **D. BHARATHA CHAKRAVARTHY**

W.P.No.26937 of 2023
and WMP.Nos.26366, 26368 & 26369 of 2023

Dr.S.Valarmathi
Petitioner

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-Vs-

1. The Secretary to Government
School Education Department,
Fort St.George, Chennai 600 009.
2. The Director of School Education Department,
DPI Buildings, College Road,
Chennai 600 006.
3. The Chief Educational Officer,
Krishnagiri,
Krishnagiri District.
4. The District Educational Officer,
Krishnagiri District.
5. The Head Master,
Government Girls Higher Secondary School,
Hosur - 635 109
Krishnagiri District.
6. The Assistant Treasury Officer,
Hosur Sub-Treasury
Hosur.

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Respondents

W.P.No.26937 of 20



Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 5th respondent his proceedings in Na.Ka.No.161/2022 dated 17.08.2022 and Na.Ka.No.119 dated 13.06.2023 and the impugned order of the 3rd respondent in his proceedings in Na.Ka.No.0294/A1/2018 dated 02.05.2023 and quash the same as being illegal, arbitrary, unconstitutional and consequently direct the respondents Nos.2 to 6 to return the recovered amount of Rs.24,000/- (Rupees Twenty Four Thousand Only) to the petitioner forthwith and disburse the petitioner's salary along with incentive increment for completion of higher qualification without any recovery for the post of Physical Education Director (Grade-I).

For Petitioner : Mr.A.Ilayaperumal

For Respondents : Mrs.S.Mythreye Chandru
Spl. Government Pleader for R1 to R5

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 5th respondent his proceedings in Na.Ka.No.161/2022 dated 17.08.2022 and Na.Ka.No.119 dated 13.06.2023 and the impugned order of the 3rd respondent in his proceedings in Na.Ka.No.0294/A1/2018 dated 02.05.2023 and quash the same as being illegal, arbitrary, unconstitutional and consequently direct the



respondents Nos.2 to 6 to return the recovered amount of Rs.24,000/- (Rupees Twenty Four Thousand Only) to the petitioner forthwith and disburse the petitioner's salary along with incentive increment for completion of higher qualification without any recovery for the post of Physical Education Director (Grade-I).

2. The case of the petitioner is that the petitioner was appointed as Physical Education Director with effect from 08.02.2006 and thereafter was accommodated as against the regular post and was regularised in service with effect from 01.06.2006. While so, since the petitioner possessed one higher qualification of M.Phil., the advance incentive for possessing the higher qualification was allowed to the petitioner and accordingly he was being paid. While so, the Government Order allowing the M.Phil qualification with reference to the Physical Education Director was passed only in the year 2016 in G.O.MS.No.177 dated 13.10.2016. In view thereof, stating that the incentive increment ought not to have paid with effect from the year 2006 and should be paid only from the date of G.O. action was made to recover the same from the said salary of the petitioner. The petitioner challenges the same by way of W.P.No.34129 of 2017 and by order dated 24.03.2022 the order was set aside and the matter was remitted back to the respondents to afford an opportunity to the petitioner and thereafter pass fresh order. Therefore, show cause notice has



been issued to the petitioner and the petitioner submitted her objection. On consideration thereof, the present order dated 17.08.2022 was passed whereby a sum of Rs.12,58,000/- which is the excess payment between the year 2006-2016 was ordered to be recovered in 86 monthly installments of Rs.14,800/- each. Aggrieved by the same, the present writ petition is filed.

3. The learned counsel appearing for the petitioner submitted that even assuming that allowing of the incentive increment was an error, it can be seen that it was allowed with effect from 01.06.2006. It was not allowed on any misrepresentation of the petitioner. When the mistake is now belatedly sought to be corrected, the amount paid from the period 01.06.2006 till the date of issue of G.O. in the year 2016 cannot now be recovered from the petitioner.

4. Per contra, the learned Special Government Pleader submitted that the petitioner is a Clause – II employee having been appointed in the cadre of Director of Physical Education and therefore he cannot claim the benefit which is given by the Hon'ble Supreme of Court of India in the case of *State of Punjab and Ors., Vs. Rafiq Masih* .

5. Heard both sides and perused the materials available on record.



6. Firstly, it can be seen that the incentive increment was granted by the respondent. The same was not because of any misrepresentation of the petitioner. Secondly, it was allowed with effect from 01.06.2006. The same is now sought to be recovered in the year 2016. In that view of the matter, the Hon'ble Supreme Court of India in *Rafiq Masih's case* while considering the hardship which would be faced by the employees in the matters of recovery belatedly has laid down the following conditions at paragraph no.18 as situated wherein recovery by the employers would be equivalent in principles of law.

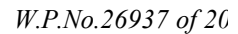
18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from 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



(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".*

(1) The impugned orders passed by the 5th respondent in Na.Ka.No.161/2022 dated 17.08.2022 and Na.Ka.No.119 dated 13.06.2023 and passed by the 3rd respondent in Na.Ka.No.0294/A1/2018 dated 02.05.2023 are upheld in as much as they correct the mistake of grant of advance increment and refixation of pay.

(2) However, the impugned orders are declared to be illegal in as much as they order recovery of the amount already paid to the petitioner being a sum



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of Rs.12,58,000/- already paid to the petitioner.

(3) Even if any recovery already been made the same should be refunded to the petitioner within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are also closed.

21.06.2024

Neutral citations: Yes/No
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D. BHARATHA CHAKRAVARTHY, J.

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To

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2. The Director of School Education Department,
DPI Buildings, College Road,
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3. The Chief Educational Officer,
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