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W.A.No.2916 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

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ad CMP No.21551 of 2024

1. The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
2. The Chief Educational Officer,
Chennai District, Egmore,
Chennai-600 008.
3. The District Educational Officer,
Chennai South Educational District,
Egmore, Chennai-600 008.

... Appellants

-VS-

- 1.K.Hemalatha
- 2.The Secretary,
Kalyanam Girls Higher Secondary School,
Chindradripet, Chennai-600 002.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order dated 28.11.2023 passed in W.P.No.17659 of 2020 on the file of this



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Court.

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For Appellants : Mr.U.M.Ravichandran
Special Govt. Pleader

For Respondents : Mr.S.Nedunchezhiyan
For R-1/Caveator

* * * * *

JUDGMENT

(Judgment of the Court was delivered
by the Hon'ble Chief Justice)

This appeal is impugning an order and judgment dated 28.11.2023 passed by a learned Single Judge of this Court while disposing of a writ petition filed by first respondent.

2. Since the issue involved was narrow, we, with the consent of learned counsel on either side, decided to dispose of the appeal at the admission stage itself.

3. First respondent was a Music Teacher in the second respondent school. The basic pay of first respondent as on 01.06.2009 was Rs.4,500-125-7000 append with consequential revision of scale of pay. The claim of



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first respondent in the writ petition was that her salary has to be fixed as per Sixth Pay Commission in the pay scale mentioned earlier. Her scale was revised in PB-1 of Rs.5,200-20200 + 2800 GP with fixation of basic salary as Rs.11,170/-. Admittedly, there was excess payment of salary made to first respondent between the period from 01.06.2009 to 31.03.2015. The salary had been wrongly fixed in the pay scale of Rs.8370 + 2800 instead of Rs.5,470+2800. Therefore, an order was issued on 05.01.2017 to recover the excess payment which was Rs.2,60,154/-. On 10.01.2017, first respondent remitted into Government account the excess salary amount of Rs.2,60,154/-. Thereafter, in 2020, almost four years later, first respondent filed Writ Petition No.17659 of 2020, alleging that the amount was wrongly recovered and seeking return of the said amount.

4. The learned Single Judge, relying upon a judgment of the Apex Court in ***State of Punjab and others vs. Rafiq Masih (White Washer)***¹, held that the recovery was not permissible from any person belonging to Class-III and Class-IV service (Group 'C' and Group 'D'

¹ (2015) 4 SCC 334



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service). First respondent, admittedly, belonged to Group 'C' category and following the principle laid in *Rafiq Masih* (supra), the Court allowed the writ petition and directed the appellants to release the amount recovered from first respondent.

5. Mr.U.M.Ravichandran, learned Special Government Pleader (Education), appearing for the appellants, submitted that the facts in *Rafiq Masih* (supra) were entirely different from the facts in the present case. Mr.Ravichandran submitted that in *Rafiq Masih* (supra), the amount was being recovered much after the employee retired, whereas in the case at hand, the employee had already returned the money that was recovered and four years later, has approached the Court. Mr.Ravichandran also submitted that what weighed in the mind of the Apex Court in *Rafiq Masih* (supra) was that the orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employee would have resulted in a hardship of a nature which would far outweigh the equitable balance of the employer's right to recover and it would be iniquitous to recover the payment made, whereas in the case on hand, the money has already been returned by the first respondent



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during the course of employment.

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6. Per contra, Mr.S.Nedunchezhiyan, learned counsel appearing for the first respondent, who has entered appearance on caveat, relying upon the judgment in ***Jagdish Prasad Singh vs. State of Bihar and others***² submitted that the Apex Court once again, following *Rafiq Masih* (supra) held that the amount was not recoverable.

7. In our view, the judgment in *Jagdish Prasad Singh* (supra) is also not applicable to the facts of this case inasmuch as in that case, the recovery was being made eight years after the retirement of the employee and hence, the Court felt that the hardship would far outweigh the equitable balance of the employer's right to recover.

8. We would agree with the stand of the appellants that *Rafiq Masih* (supra) would not be applicable to the facts of this case. As noted earlier, first respondent had already remitted into the Government account on 10.01.2017 the excess salary amount of Rs.2,60,154/- and

² 2024 SCC OnLine SC 1909



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after a period of almost four years, approached the Court by filing the writ petition. Firstly, first respondent's case itself is affected by delay and laches. First respondent having already remitted the excess salary cannot state that she had to undergo any hardship of a nature which was the case in *Rafiq Masih* (supra).

In the circumstances, the impugned order dated 28.11.2023 in W.P.No.17659 of 2020 is hereby quashed and set aside. Writ Appeal is allowed. No order as to costs. Consequently, C.M.P.No.21551 of 2024 is closed.

(K.R.SHRIRAM, CJ.)

(D.KRISHNAKUMAR, J.)

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Index : Yes/No

NC : Yes/No

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THE HON'BLE CHIEF JUSTICE
AND
D.KRISHNAKUMAR,J.

(sra)

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