



W.A.(MD) No.322 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2024

CORAM:

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

**W.A.(MD) No.322 of 2024
and
C.M.P.(MD) No.2990 of 2024**

- 1.The State of Tamilnadu
rep.by Secretary to Government
School Education Department
Fort St.George, Chennai-600 009
- 2.The Joint Director (Vocational)
Directorate of School Education
DPI Compound, College Road
Chennai-600 006
- 3.The Chief Educational Officer
Ramanathapuram

... Appellants

-VS-

S.Manimuthu

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 29.08.2022, passed in W.P.(MD) No.5503 of 2021, on the file of this Court.



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For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondent : Mr.R.Saravanan

J U D G M E N T

**[Judgment of the Court was made by
The Hon'ble CHIEF JUSTICE]**

Heard Mr.D.Sadiq Raja, learned Additional Government Pleader, for the appellants and Mr.R.Saravanan, learned counsel for the respondent.

2. Learned Additional Government Pleader submits that the re-pay fixation has been done in accordance with the principles. A wrong pay fixation was done earlier. The same has been corrected. However, the learned Single Judge, while passing the impugned order, did not discuss about the re-pay fixation and only based on the Judgment of the Apex Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334***, has allowed the writ petition, on the premise that recovery cannot be made after five years.



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3. Learned counsel for the original writ petitioner submits that the appellants are bound by their own Government Order bearing No.G.O.2d No. 153, School Education Department, dated 30.10.2015.

4. We have gone through the Judgment delivered by the learned Single Judge. The learned Single Judge has allowed the writ petition, on the basis of the Judgment of the Apex Court in the case of **Rafiq Masih** (supra). The said Judgment is applicable in case of recovery. The original writ petitioner was working as a Class-III employee. The recovery was claimed after five years. The parameters laid down in **Rafiq Masih** (supra) by the Apex Court would squarely apply in the present case. To that extent, the Judgment of the learned Single Judge cannot be faulted with.

5. However, while deciding the writ petition, the learned Single Judge did not discuss about the legality of the pay fixation done. It is not that the pay fixation cannot be rectified. Though, as held by the learned Single Judge, recovery cannot be claimed after five years in view of the Judgment of the Apex Court in the case of **Rafiq Masih** (supra), the learned Single Judge also ought to have considered the legality of the pay fixation.



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6. In light of that, we pass the following order.

- (i) The order of the learned Single Judge, dated 29.08.2022, passed in W.P.(MD) No.5503 of 2021, to the extent that recovery could not have been claimed from the original writ petitioner on account of erroneous pay fixation is upheld.
- (ii) The matter is remitted to the learned Single Judge to the extent of deciding about the validity of the re-pay fixation done.
- (iii) Till the writ petition is decided by the learned Single Judge, the appellant – authority shall make payment of pension and other retiral benefits to the original writ petitioner, as per the pay scale determined by them. The same would be without prejudice to the rights and contentions of the original writ petitioner and subject to the decision in the writ petition with regard to the repay fixation.
- (iv) The payment of retiral benefits, as directed above, shall be made within two months from today.



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7. The writ appeal is disposed of with the aforesaid observations. No costs. Consequently, connected miscellaneous petition is closed.

[S.V.G., C.J.]

[M.S.K., J.]

01.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.The Secretary to Government,
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