



W.P.(MD)No.6397 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.6397 of 2024 &
W.M.P.(MD)Nos.5988, 5989 & 5991 of 2024

V.Poongothai @ Mariammal

... Petitioner

Vs.

1.The Accountant General (A&E),
O/o. The Accountant General,
361, Annasalai,
Chennai-600 018.

2.The District Educational Officer (Elementary Education),
O.o the District Educational Officer,
Thoothukudi,
Thoothukudi District.

3.The Block Educational Officer,
O/o. The Block Educational Officer,
Tiruchendur,
Thoothukudi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the impugned order in No.P.22/2/12227497/ADK dated 01.11.2023 on the file of the respondent No.1 and the consequential order

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of recovery in Na.Ka.No.846/A2/2023 dated ..02.2024 signed on 22.02.2024 on the file of the 3rd respondent and quash the same as illegal and consequently to direct the respondents to disburse the regular monthly salary without any reduction of pay till the end of service on extension till the academic year 2023-2024 and to provide the retirement benefits and monthly pension.

For Petitioner : Mr.S.Louis

For Respondents : Mr.T.Amjadkhan
Government Advocate for R2&R3
: Mr.P.Gunasekaran
Standing counsel for R1

ORDER

Heard Mr.S.Louis, learned counsel for the petitioner, Mr.P.Gunasekaran, learned Standing Counsel for the 1st respondent and Mr.T.Amjadkhan, learned Government Advocate for the respondents 2 and 3.

2. The petitioner has filed this petition seeking a Writ of Certiorarified Mandamus to quash the impugned order in No.P. 22/2/12227497/ADK dated 01.11.2023 on the file of the respondent No.1 and the consequential order of recovery in Na.Ka.No.846/A2/2023



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dated ..02.2024 signed on 22.02.2024 on the file of the 3rd respondent and for a consequential direction to the respondents to disburse the regular monthly salary without any reduction of pay till the end of service on extension till the academic year 2023-2024 and to provide the retirement benefits and monthly pension.

3. The petitioner who has been given with the benefit of G.O.Ms. 234 School Education Department dated 10.09.2009 in pursuant to the orders of the Court obtained in W.A(MD)No.1687 of 2011 has filed this writ petition in view of the subsequent re-fixation and recovery on the footing that the earlier fixation pursuant to the Court order was done wrongly.

4. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court in *State of Punjab Vs. Rafiq Masih (White Washer) etc.*, reported in AIR (2015) 4 SCC 334 wherein it is held that the recovery of excess payment wrongly made by the Department to the retired employees is impermissible in law. The relevant paragraphs are extracted hereunder:



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“12. It is not possible to postulate all situation 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 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.”

5. However, the learned counsel for the petitioner submitted that in the earlier order itself the petitioner's claim for the fixation of pay as how she claimed was allowed and hence the same logic applied for the other



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similarly placed person in W.P.No.16471 of 2020 is not applicable to the case of the petitioner. If the first respondent feels that the petitioner should also be subjected to the findings rendered in W.P.No.16471 of 2020, he can raise his objection and sent it to the respondents 2 and 3 who in turn shall give a show cause notice to the petitioner by giving her an opportunity to make her submissions and on hearing the same, pass orders afresh.

6. The above judgment of the Hon'ble Supreme Court in ***Rafiq Masih (White Washer) etc.,*** is squarely applicable to the case of the petitioner as she is a Group C Officer. As the impugned recovery falls under (i) and (iii) of the impermissible recoveries enumerated in the above judgment, I feel that the petitioner is also entitled to get the above benefits.

7. Furthermore, the hardship caused to the employees due to the recovery would be harsher than the employer's right to recover. The employees are not at fault and they are in noway responsible for receiving



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the excess payment. The employees have not suppressed any material facts and induced the employer to grant him excess pay. It is the employer who is at fault who has been sleeping for many years without fixing his own mistake and have issued orders for recovery. As the impugned recovery is impermissible as per the settled legal position referred above, the orders are liable to be set aside.

8. In the result,

(i) This Writ Petition is **disposed of**. The order of the 3rd respondent in Na.Ka.No.846/A2/2023 dated 22.02.2024 is quashed and the third respondent is directed not to effect any recovery from the petitioner.

(ii) Insofar as the re-fixation is concerned the first respondent shall raise his audit objection and sent it to the respondents 2 and 3 who in turn shall serve show cause notice upon the petitioner and give an opportunity to the petitioner to make her submissions and then pass orders afresh within a period of four weeks from the date of receipt of show cause notice.



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(iii) There shall be no orders as to Costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No

Index : Yes/No

PJL

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R.N.MANJULA, J.

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