



W.P.(MD).No.14710 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.14710 of 2021

R.Chellakumar Pandian

... Petitioner

Vs.

**1.The Block Educational Officer,
Melanethithanallur,
Tenkasi District.**

**2.The Correspondent,
TDTA St.Paul Middle School,
North Vagaikulam,
Manur Taluk,
Tirunelveli District.**

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the 1st respondent in his proceedings in Na.Ka.No. 333/A2/2011, dated 28.06.2021 and quash the same.

For Petitioner : Mr.V.Panneer Selvam

**For R1 : Mr.M.Sarangan
Additional Government Pleader**



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ORDER

The present writ petition has been filed to call for the records pertaining to the order passed by the 1st respondent in his proceedings in Na.Ka.No. 333/A2/2011, dated 28.06.2011 and quash the same.

2. The petitioner was appointed as a Secondary Grade Teacher on 11.06.1985 at TDTA St.John Middle School, Parvathipuram, Manur Union, Tirunelveli District. Thereafter, he was promoted as Elementary School Headmaster on 12.08.1999 and further, transferred to TDTA Primary School, Periyasampuram, Melaneelithanallur Union on 02.06.2009. Whiles, the V pay commission came to be effected by issuing G.O.Ms.No.234 Finance (Pay Cell) Department, dated 01.06.2009. Though the order was issued on 01.06.2009, it was given effect from 01.01.2006. On the basis of the One Man Commission recommendation granting benefits, the Government issued the aforesaid order and implemented the same by issuing letter, dated 15.09.2010 along with additional fitment table to fix the scale of pay. In view of the same, the petitioner's scale of pay was fixed. As a result of which, the 1st respondent had passed an order of recovery on 01.12.2012 stating that as per the



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clarification letter of the Government, dated 05.01.2012, the pay fixation which was issued as per the Government letter, dated 15.09.2010 is erroneous and hence, the fixation to be cancelled. Challenging the same, the petitioner has filed W.P(MD)No.16898 of 2012 before this Court and an order of interim stay was granted by this Court and thereafter, the same was allowed on 04.10.2020, in which the 1st respondent was directed to issue show cause notice setting out all the facts and details to the petitioner and on receipt of the same, the petitioner was directed to submit his explanation and thereafter, the 1st respondent was directed to pass appropriate orders on merits. In the meanwhile, the petitioner was promoted as a Middle School Headmaster on 02.06.2016 and currently, he is working in the 2nd respondent school. Pursuant to the order of this Court in W.P(MD)No.16898 of 2012, dated 14.10.2020, the 1st respondent issued a show cause notice on 30.11.2020 referring to G.O.Ms.Nos.254 to 340, Finance Department, dated 26.08.2010 read with Government letters, dated 05.01.2001 and 12.01.2011. On receipt of the same, the petitioner made a request to the 1st respondent to furnish the relevant Government Orders and the Government letters enabling him to submit a detailed reply on 10.12.2020. On receipt of his request, the 1st respondent had sent yet another notice requiring the petitioner to submit a reply within a week on 22.01.2021. Since the



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petitioner was not furnished with the copy of the orders as requested by him, even before he could submit a reply, the impugned order of recovery of Rs. 64,907/- came to be passed by the 1st respondent on 28.06.2021. Challenging the same, this writ petition came to be filed.

3. The learned counsel for the petitioner relying upon the additional fitment table-15 annexed along with Letter No.51082/Pay Cell/2010-1, dated 15.09.2010 of Finance (PC) Department which has been addressed to all the Secretaries to the Government with respect to the Tamil Nadu Revised Scales of Pay Rules, 2009 revising the scales of pay based on the recommendations of the One Man Commission, 2009 by issuing additional fitment table in reference to G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009, G.O.Ms.No. 444, Finance (PC) Department, 09.09.2009 and G.O.Ms.Nos.254 to 340, Finance (PC) Department, dated 26.08.2010, submitted that since the petitioner received Rs.7700 scale of pay as on 01.10.2005 and he has completed 7 years span of service, he is entitled to a revised basic pay of Rs.22,460/- in terms of additional fitment table-15 and pressed for allowing the writ petition.



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4. Per contra, the learned Additional Government Pleader appearing for the 1st respondent has categorically contended that, all the G.O.Ms.Nos.254 to 340, Finance (PC) Department, dated 26.08.2010 referred to in the aforesaid letter, dated 15.09.2010 of the Principal Secretary, G.O.Ms.No.270, Finance (PC) Department, dated 26.08.2010 alone pertains to education department and all other Government Orders excluding G.O.Ms.No.270 from G.O.Ms.Nos. 254 to 340, Finance (PC) Department, dated 26.08.2010 were dealing with departments other than education department. Placing G.O.Ms.No.270, Finance (Pay Cell) Department, dated 26.08.2010 for my perusal, the learned Additional Government Pleader submitted that, the said Government Order has dealt with the post of Music Mistress and Training Instructor (formerly Motor Mechanic and Senior Mechanic) alone and the same has nothing to do with the case of Primary School Headmaster and hence, the same is not applicable to the facts and circumstances of the case of the writ petitioner. He further submitted that, G.O.Ms.No.23, Finance (PC) Department, dated 12.01.2012 deals with the revision of scale of pay of certain categories of teachers and the petitioner will be duly covered by the aforesaid Government Order and in view of the same, Letter No.14483/CMPC/2011-1, dated 05.01.2012 of the Principal Secretary to the Government, Finance (CMPC) Department to all the directors of school



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education department indicating the revised selection grade / special grade scales of pay of teachers has been elaborated, in which the revised scale of pay of Headmaster of Primary School has been fixed as Rs.15600 – 39100 + 5700 grade pay would be applicable to the petitioner. In view of the same, the said recovery order is rightly passed and the same need not be interfered.

5. However, it is pointed out by the learned counsel for the petitioner that, the petitioner has attained his age of superannuation on 30.05.2024. In view of the same, his pension proposal was forwarded before one month of his date of superannuation. The remarks as recorded by the Office of Accountant General (A&E) for the inadmissibility of the petitioner's pension proposal is that the revised pay of the petitioner as Per G.O.Ms.No.23, Finance (PC) Department, dated 12.01.2012 as on 01.01.2006 ought to have been Rs.15600 + 5400 GP – 21000/- only and not Rs.22460/- as noted in serial no.114.

6. Heard the learned counsel on either side and perused the materials available on record.



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7. A careful perusal of the remarks of the Office of Accountant General (A&E) would throw light on the fact that the revised pay of the petitioner ought to have been fixed only in the entry level at Rs.21000/- and not at Rs.22460/-. However, the same came to be fixed only by the mistake of the respondent authorities and the same cannot be attributed to the writ petitioner and since the petitioner has already retired applying the principles of ***State of Punjab and Haryana Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334***, considering the fact that the excess payment was not at the mistake of the petitioner, no recovery shall be made from the petitioner. The relevant portion of the said judgment is extracted as follows:

“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.



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(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.”*

8. The petitioner's case will be fully covered vide clause (3) of the mandates of **White Washer's** case extracted supra. The recovery of excess payment made to the petitioner as early as from the year 2010 cannot be made by the impugned order, dated 28.06.2021. The respondents are directed not to recover the excess payment so far made to the petitioner and consequently, the 1st respondent is directed to sanction terminal benefits by fixing the the revised scale of pay at Rs.15600 + 5400 GP – 21000. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of copy of this order.



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9. Accordingly, this Writ Petition is partly allowed. No costs.

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

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To

The Block Educational Officer,
Melanethithanallur,
Tenkasi District.



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L.VICTORIA GOWRI, J.

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