



W.P.(MD)No.14997 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.14997 of 2024 &
W.M.P.(MD)Nos.13144, 13145 & 13147 of 2024

P.Velmurugan

... Petitioner

vs.

- 1.The Secretary,
Education Department,
Fort St.George,
Chennai District - 600 009.
- 2.The Director,
The Elementary Education,
DPI Campus,
Chennai - 600 006.
- 3.The District Educational Officer,
The Elementary Education Department,
Madurai District - 625 002.
- 4.The Block Education Officer,
The Elementary Education Department,
T.Vadipatti, Madurai District - 625 218.
- 5.The Assistant Director,
State Government of Audit Department,
Madurai Region, Pangajam Colony,
Theppakulam,
Madurai - 625 009.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the impugned order issued by the 4th respondent in proceedings in Na.Ka.No.1837/Aa1/2023 on 10.05.2024 and quash the same as illegal and unconstitutional.

For Petitioner : Mr.K.Muthu Ganesa Pandian

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

Heard Mr.K.Muthu Ganesa Pandian, learned counsel appearing for the petitioner and Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents.

2. The petitioner, who retired as Middle School Headmaster on 30.05.2024 due to superannuation has filed this petition seeking to quash the impugned order of the fourth respondent in Na.Ka.No.1837/Aa1/2023 dated 10.05.2024 as illegal and unconstitutional.

3. Mr.K.Muthu Ganesa Pandian, learned counsel appearing for the petitioner submitted that the order of recovery has been issued on the



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premise that the pay of the petitioner has been fixed wrongly during pay revision and hence, the petitioner's pay has been re-fixed which resulted in recovery.

4. The issue raised in this writ petition is no more a *res integra* as the position has already been settled by the Apex Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696***. Various Orders have been passed by this Court on several occasions by adopting the principles laid down in the ***White Washer's case***. Similar issue has surfaced before this Court in W.P.No. 16471 of 2020, wherein this Court after hearing the submissions made by both the parties has held as under.

"6. The long and short point involved in the present Writ Petition is about the disentitlement of the petitioner to get the benefit of G.O.Ms.No.23 dated 12.01.2011. This is obviously because the petitioner had opted to retain his scale of pay applicable to his previous post of selection grade of Primary School Headmaster. After he was promoted as B.T.Assistant, the petitioner availed the benefit of G.O.Ms.No.590 dated 01.08.1992 and thereby got the pay protection. An One Man Commission was appointed to allay the pay anomalies subsequent to the pay revision and the One Man Commission's recommendations were



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implemented by the Government under G.O.Ms.No.23, dated 12.01.2011. The grade pay of Rs.5400/- is applicable as per G.O.Ms.No.23, dated 12.01.2011, only to those persons who retain the higher pay in the scale of pay of Rs.8000-275-13500 as on 01.01.2006. Since the petitioner was getting pre-revised scale of Rs.6500-200-10500 his pay band is fixed at Rs.9300- 34800+Grade Pay 4700/-. This is because of the following clarification issued by the Government in its letter No.10135/CMPC/2013-1 dated 04.10.2013, the Finance (CMPC) Department as under :

“.....The employees/teachers who have been promoted to higher post prior to 01.01.2006 and continued to retain the higher scale of pay of the substantive post by applying of G.O.No.590 dated 01.08.1992 have already availed the fitment benefit of fixation of pay by applying 1.86 factor in the revised scale of pay with effect from 01.01.2006 by taking into account the substantive pay in the pre-revised scale of pay as on 31.12.2005. Therefore, they are not entitled for higher grade pay applicable to the Selection Grade / Special Grade of the substantive post, that is, lower post consequent on the subsequent revision of pay made to such categories.”

7. Since the petitioner's pay has already been revised corresponding to his pre-revised scale of pay of Rs.6500-200-10500, the grade pay of Rs.5,400/- is not applicable to the case of the petitioner. So it is due to the exercise of option by the employee when he reaches a different pay band on promotion or pay revision. In view of the above reasons, sometimes junior might get more pay than the senior. In such case, the aggrieved has got right to step up the difference, if he could make out a case for anomaly. In the present case, the petitioner who had opted to retain his earlier scale of pay even after getting promoted as B.T.Assistant (i.e) Middle School Headmaster, had availed the benefit once. So it was rightly pointed out during the audit that the grade pay



was fixed excessively and thus, the recovery order has been issued.

8. However, the petitioner is a pensioner and the excess payment received by him was not due to his default. The petitioner may not be in a position to repay the excess amount which was caused due to the fault of the authorities. However, the revised pension is applicable and the petitioner has to understand that the earlier error has been now rectified and that had caused the reduction in the grade pay for the purpose of calculating the pension.

9. However in the matter of recovery, the respondents have to follow the principles of White Washer case. Since the petitioner is a retired employee and the mistake of excess payment is not at his default, no recovery shall be made from the petitioner. 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 (2015) 4 SCC 334 in which it is held as under:-

“18. 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



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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."

10. The benefit of the above judgment would also be available to the petitioner, who is a retired employee. So, I feel it is appropriate to quash the impugned order only in respect of recovery.

11. Hence, this Writ Petition is partly allowed with a direction that the respondents shall not recover the excess payment so far made to the petitioner. Consequently, connected miscellaneous petition is closed. No costs."

5. In the instant case also, the excess payment received by the petitioner was not due to his default. If the respondents consider that pay fixation has been wrongly done, orders have to be passed after giving prior notice to the petitioner. However, recovery is not permissible. Hence, the present petitioner who is similarly placed to that of the petitioner in the above referred Judgment is also entitled to the similar relief and the impugned order of recovery is liable to be set aside.



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6. In view of the above observations, the writ petition is **allowed** and the impugned order of the fourth respondent in Na.Ka.No. 1837/Aa1/2023 dated 10.05.2024 is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.07.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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To

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Fort St.George, Chennai District - 600 009.
- 2.The Director,The Elementary Education,
DPI Campus, Chennai - 600 006.
- 3.The District Educational Officer,
The Elementary Education Department,
Madurai District - 625 002.
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R.N.MANJULA, J.

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