



W.P.(MD)No.15068 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.15068 of 2024

A.Arul Baby

... Petitioner

Vs.

- 1.The Secretary to the Government,
School Education Department,
St.George Fort,
Chennai-600 009.
- 2.The Director,
School Education Department,
Chennai-600 006.
- 3.The District Educational Officer (Elementary),
Opposite Telephone Exchange,
Tallakulam,
Madurai-625 002.
- 4.The Block Educational Officer,
Alanganallur Union,
Vadipatti Taluk,
Madurai District-625 505.
- 5.The Treasury Officer,
District Treasury,
Madurai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fourth respondent in his proceedings Na.Ka.No.1361/A1/2023 dated 05.06.2024 and quash the same as illegal and consequently direct the respondents to pay gratuity amount to the petitioner within the time frame that may be stipulated by this Court.

For Petitioner : Mr.V.P.Rajan
For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

This writ petition has been filed to quash the order in Na.Ka.No. 1361/A1/2023 dated 05.06.2024 as illegal and consequently to direct the respondents to pay the gratuity amount to the petitioner within the time frame that may be stipulated by this Court.

2.Heard Mr.V.P.Rajan, learned counsel for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader for the respondents.

3.The petitioner retired as Primary School Headmistress on 30.06.2023. The petitioner contended that on the premise that the pay of the



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petitioner has been fixed wrongly during pay revision, the petitioner's pay has been re-fixed, due to which the order recovery has been passed.

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.

"15.Mr.J.Pooventhera Rajan, learned counsel for the petitioner cited the decision rendered in "White Washers" case to canvas his point that the stipulation made in White Washers case is applicable to the petitioners and even for the sake of argument, if the payment made to the petitioners are considered excess, it cannot be recovered. In paragraph 12 of the White Washers case the following summary has been given:

"12. 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 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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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.”

16.No doubt, the Petitioner who are working as Junior Assistants would fall under Class IV employees and some of them had retired from service and the



recovery is sought to be made after five years. So the conditions (i) to (iii) are squarely applicable to facts of the case. However, in the case on hand, it is not excess payment but the payment due to be paid to the Petitioners, and hence it cannot even be considered as excess payment and hence no need to give the concession.

17.Because there is a conceivable difference between concession and entitlement. The 'entitlement' represents a right which can be exercised or claimed and the concession is a relaxation or liberty given by someone at his discretion, and hence the receiver cannot have any control or claim over concession. What is being enjoyed by the Petitioners are only entitlement derived from G.O.(Ms)No.152 (Handloom, handicrafts, Textiles and Khadi (F1) Department) dated 12.07.2012. Hence the impugned order issued for recovery of the payment already made and to stop making further payment is due to misinterpretation and misunderstanding of the scope of the above Government Order.

18.In view of the above stated reasons, the impugned orders in the respect Writ Petitions are set aside and these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."



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5. In the case on hand, the petitioner was working as Primary School Headmistress at the time of retirement. The recovery has been made subsequent to his retirement. Hence, the recovery would fall under clauses (ii) and (iii) of the impermissible recovery as settled down in the '**White Washer**' case. Since the recovery is impermissible in law as per the decision cited supra, recovery order is liable to be set aside.

6. In view of the above observations, the writ petition is **allowed** and the order of the first respondent in Na.Ka.no.1361/A1/2023 dated 05.06.2024 is quashed. No costs.

09.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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R.N.MANJULA, J.

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