



W.P(MD)No.16414 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16414 of 2020

and

W.M.P.(MD)Nos.13737, 13738 & 13742 of 2020

S.Lalitha

Petitioner

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Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary,
Department of Higher Education,
Fort St.George, Chennai-600 009.
- 2.The Director / Commissioner,
The Director of Technical Education,
Guindy, Chennai-600 025.
- 3.The Correspondent,
Arulmigu Palani Andavar Polytechnic College,
Palani-624 601, Dindigul District.
- 4.The Principal,
Arulmigu Palani Andavar Polytechnic College,
Palani-624 601,
Dindigul District.
- 5.Assistant Director,
Internal Audit,
Tamil Nadu Government Local Fund Audit Department
Siluvathur Road,
Near SB Manickam CBSE School,
Balakrishnapuram-624 005,
Dindigul District.

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W.P(MD)No.16414 of 2020

Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 4th respondent Principal in Na.Ka.No.619/A4 / 2020 dated 07/04/2020 and Quash the same and further Direct the respondents herein in the post of Skilled Assistant w.e.f., 01/12/2019, with interest for belated payment of retirement benefits

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chambers

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader
for R1, R2 & R5

: Mr.R.Murali for R3 & R4

ORDER

Heard both sides.

2. The petitioner was appointed as skilled assistant on 10.01.1983 in the Department of Electronics in the third respondent college namely Arulmigu Palani Andavar Polytechnic College, Palani. She completed her probation on 10.01.1985. She was temporarily appointed as Instructor on 15.07.1987. On 23.04.1996, she was reverted to the post of



W.P(MD)No.16414 of 2020

skilled assistant. The petitioner filed W.P.No.5992 of 1996 challenging the reversion. She got interim order. By virtue of the same, she continued as Instructor. On 08.10.1999, the writ petition was dismissed. W.A.No.221 of 2000 filed by the petitioner was also dismissed on 09.02.2000. The petitioner was reverted as skilled assistant on 18.01.2000. The petitioner retired on 06.03.2019. She was allowed to go on voluntary retirement on 30.11.2019. During her career, the petitioner was given selection grade pay in the year 1995, special grade pay in the year 2005 and super grade pay in the year 2015. The audit department raised objection on 18.02.2020 stating that excess pay has been paid to the petitioner. Thereupon, the college directed the petitioner to rejoin the duty. The petitioner was also directed to repay a sum of Rs.22,35,741/- vide order dated 07.04.2020. Challenging the same, the present writ petition came to be filed.

3. I carefully considered the rival contentions and went through the materials on record. It is beyond dispute that the petitioner was relieved from service on 30.11.2019. In fact, the Director of Technical Education, Chennai issued proceedings dated 04.12.2019 approving the same. The question that arises for consideration is whether post retirement, an order



W.P(MD)No.16414 of 2020

could have been passed against the petitioner. Of-course, if the petitioner was guilty of any misrepresentation or fraud, then certainly action could have been taken. In this case, the petitioner cannot be accused of any such act. The Hon'ble Supreme Court in the decision reported in **(2015) 4 SCC 334 (State of Punjab Vs. Rafiq Masih (White Washer))** had held as follows:-

“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.”



W.P(MD)No.16414 of 2020

(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.*

4. The case on hand will fall under category two. It is seen that the petitioner had in fact worked as instructor and yet, she was asked to repay. I fail to understand the approach of the management. When the petitioner had worked as instructor, she ought to be paid the instructor's salary and yet, the petitioner repaid the sum of Rs.67,515/-. It is also seen that the petitioner was given special grade, selection grade and super grade only in the post of skilled assistant. Therefore, the objection raised by the audit department does not appear to be in order.

5. Respectfully applying ***White Washer case***, I set aside the impugned order. The Writ Petition is allowed. The respondents are directed to disburse the benefits payable to the petitioner as expeditiously as possible within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

08.03.2024

Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.16414 of 2020

NOTE: Issue Order Copy on 20.03.2024

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- To
1. The Secretary,
Department of Higher Education,
Fort St. George, Chennai-600 009.
 2. The Director / Commissioner,
The Director of Technical Education,
Guindy, Chennai-600 025.
 3. Assistant Director,
Internal Audit,
Tamil Nadu Government Local Fund Audit Department
Siluvathur Road,
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W.P(MD)No.16414 of 2020

G.R.SWAMINATHAN, J.

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W.P(MD)No.16414 of 2020

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