



W.P.(MD)No.16708 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.16708 of 2024 &
W.M.P.(MD)No.14459 of 2024

R.Ramachandran

... Petitioner

vs.

- 1.The Chief Educational Officer,
Officer of the Chief Educational Office,
Ramanathapuram District,
Ramanathapuram.
- 2.The District Educational Officer,
Office of the District Educational Office,
Ramanathapuram District,
Ramanathapuram.
- 3.The Block Educational Officer,
Kamuthi, Ramanathapuram District.
- 4.The Additional Elementary Education Officer,
Kamuthi, Ramanathapuram District.
- 5.The Supervisor,
Regional Resources Centre,
Integrated School Education,
Kamuthi,
Ramanathapuram District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned re-fixation of the salary payment order in Na.Ka.No.781/A5/2024 dated 18.06.2024 and subsequent impugned notice in Na.Ka.No.781/A5/2024 dated 21.06.2024 issued by the third respondent and quash the same and consequently direct the respondents to settle the payment of retirement benefits payable to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.S.Gladson
For Respondents : Mr.T.Amjadkhan
Government Advocate
for R1 to R4

ORDER

Heard Mr.S.Gladson, learned counsel appearing for the petitioner and Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents 1 to 4.

2. The petitioner has filed this writ petition seeking to quash the impugned order of the third respondent in Na.Ka.No.781/A5/2024 dated 18.06.2024 and the subsequent impugned notice in Na.Ka.No.



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781/A5/2024 dated 21.06.2024 and consequently to direct the
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respondents to settle his retirement benefits within a stipulated time.

3. The petitioner who is a retired Headmaster was given with the recovery order dated 18.06.2024 alleging that he has been paid excess payment from the year 2013 onwards and the impugned notice dated 21.06.2024 stating that his pension is re-fixed.

4. Mr.S.Galdson, learned counsel appearing for the petitioner submitted that there is no fault on the side of the petitioner for getting any alleged excess payment and that the recovery order cannot be issued once the petitioner is retired from service.

5. In this regard, it is appropriate to refer the order of the Principle Seal of this Court in W.P.(MD)No.16471 of 2020 dated 06.11.2023, wherein, it is held as under.

"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



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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 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



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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."

6. In the case on hand, the petitioner is a retired person and therefore, he fall under Class (ii) of the above category.

7. Furthermore, the hardship caused to the employee due to the recovery would be harsher than the employer's right to recover. The employee is not at fault and he is in noway responsible for receiving the excess payment. The employee has 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 order



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is liable to be set aside. So far as the re-fixation of pension is concerned, it will be appropriate for the respondents to put the petitioner on notice and give him an opportunity of hearing and thereafter pass orders in this regard.

8. In view of the above stated reasons, the writ petition is **allowed** and the impugned order of the third respondent in Na.Ka.No. 781/A5/2024 dated 18.06.2024 and the subsequent impugned notice in Na.Ka.No.781/A5/2024 dated 21.06.2024 are set aside. The respondents are directed to release the retiral benefits of the petitioner by passing appropriate orders within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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

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To
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R.N.MANJULA, J.

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