



W.P.(MD)Nos.18435 & 18436 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.08.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)Nos.18435 and 18436 of 2024

and

W.M.P.(MD)Nos.15681 and 15684 of 2024

S.Rajathy
R.Sahila

... Petitioner in W.P.(MD)No.18435/2024
... Petitioner in W.P.(MD)No.18436/2024

Vs.

1.The Assistant Director,
State of Government Audit Department,
Old Collectorate Complex,
Thanjavur-613 001.

2.The Headmaster,
Government Higher School (ADW),
Manojipatti,
Thanjavur-613 004.

.. Respondents in both petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the second respondent, i.e., the Headmaster, Government High School (ADW), Manojipatti, Thanjavur District in his No.Na.Ka.45/2024-2025 dated 13.06.2024 and quash the same in respect of Sl.No.2 and 3 alone.



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In both petitions:

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.T.Amjadhkhan
Government Advocate

COMMON ORDER

The petitioners have filed these Writ Petitions seeking a Writ of Certiorarified Mandamus to call for the records of the second respondent in his No.Na.Ka.45/2024-2025 dated 13.06.2024 and quash the same in respect of Sl.No.2 and 3 alone.

2. Heard Mr.S.Visvalingam, learned counsel for the petitioner and Mr.T.Amjadhkhan, learned Government Advocate for the respondents in both petitions.

3. By consent of both parties, these Writ Petitions are taken up for final disposal at the stage of admission itself.

4. The petitioners are working as a BT Assistants in the second respondent School. They were granted with the special incentive increment for acquiring higher qualification on 01.01.20007 and 01.06.2007, respectively by



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the Special Tahsildar, Thanjavur District. However, vide the impugned order dated 13.06.2024, on the basis of audit slip, the petitioners' pay has been re-fixed and an order of recovery has also been issued. But the said order, dated 13.06.2024 has been issued even without putting the petitioners on notice to make their submissions.

5. So far as the recovery element is concerned, the petitioners are no way responsible for fixation of pay or they did not contribute for the fixation of incentive increment allowed to them. Hence, the petitioners' cases are squarely covered under the decision of the Hon'ble Supreme Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and others*** reported in ***2015 (4) SCC 334***, wherein recoveries by the employers, would be impermissible in law and the relevant portion reads as follows:

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii)

(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.”

6.The recovery is sought to be made after five years. Hence, the recovery would fall under clauses (iii) of the impermissible recovery as settled



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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.

7. Since the impugned order has been given without putting the petitioners on notice, the same is liable to be set aside. Hence, the same shall be done, after issuing notice to the petitioners and giving them an opportunity to make their submission.

8. In view of the same, these writ petitions are allowed and the impugned order dated 13.06.2024 passed by the second respondent in respect of recovery is set aside once far all and in respect of revised fixation, the impugned order dated 13.06.2024 passed by the second respondent, is set aside for want of notice. The second respondent is directed to issue notice to the petitioners before re-fixing the pay for the reasons stated therein and afford an opportunity to the petitioners to make their submissions and then pass appropriate orders. No costs. Consequently, connected miscellaneous petitions are closed.

02.08.2024

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

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