



W.P.(MD)Nos.18465 to 18475 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.18465 to 18475 of 2024

and

W.M.P.(MD)Nos.15700, 15772, 15743, 15773, 15705, 15708, 15702, 15745,
15703, 15736 and 15737 of 2024

W.P.(MD)No.18465 of 2024:

P.Sangeetha

... Petitioner

Vs.

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

2.The Special Tahsildar (ADW),
Old Collectorate Complex,
Thanjavur-613 001.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent i.e., the Special Tahsildar (ADW), Thanjavur in his No.Na.Ka. 320/2024/A3 dated 10.07.2024 and quash the same in respect of Sl.No.1 alone and consequently direct the Special Tahsildar (ADW), Thanjavur to make payment of pensionary benefits to the petitioner, within a specified time frame.



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In both petitions:

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.N.Ramesh Arumugam
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.320/2024/A3 dated 10.07.2024 and quash the same and consequently, to direct the Special Tahsildar (ADW), Thanjavur to make payment of pensionary benefits to the petitioner within a specified time frame.

2. Heard Mr.S.Visvalingam, learned counsel for the petitioner and Mr.N.Ramesh Arumugam, 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, who are the Secondary Grade Teachers, were granted with the special incentive increment for acquiring higher qualification



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in the years 1998, 2000, 2001 and 2005, respectively. However, vide the impugned order dated 10.07.2024, on the basis of audit slip, the petitioners' pay has been re-fixed and thereby, an order of recovery has also been issued. But the recovery order, dated 10.07.2024 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 in 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 10.07.2024 passed by the second respondent in respect of recovery is set aside once for all and in respect of revised fixation, the impugned order dated 10.07.2024 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.

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

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