



W.P.(MD)No.18686 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.18686 of 2024

R.Sahaya Devarajan

... Petitioner

Vs.

1.The Director of School Education,
Chennai.

2. The Accountant General (A & E),
No. 361, Anna Salai,
Chennai.

3.The District Educational Officer,
Theni.

4. The Correspondent,
R.C. High School,
Theni.

... 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 orders passed by the 2nd respondent in his proceedings in No.P24/1/12423947/ADK dated 02.09.2022 and quash the same and direct the respondents to sanction the pension benefits with grade pay of Rs 5,400/- and refund the recovery amount of Rs.16,97,842/- and refix the pension with all other consequential benefits with interest to the petitioner.

For Petitioner : Mr. V.Panneer Selvam
For Respondents : Mr.M.Siddharthan – for R1 & R3
Additional Government Pleader
Mr.P.Gunasekaran – for R2
Standing Counsel

ORDER

Heard Mr. V.Panneer Selvam, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents 1 and 3 and Mr.P.Gunasekaran, learned Standing Counsel appearing for the second respondent.



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2. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

3. The petitioner has filed this writ petition challenging the order of the second respondent dated 02.09.2022 through which the grade pay of the petitioner is to be fixed only at Rs.4,800/- and not Rs.5,400/-. The petitioner who has attained the age of superannuation has allowed to retire on 30.06.2022. When the fourth respondent sent a pension proposal to the second respondent, the second respondent appears to have got some objection as to the grade pay allowed to the petitioner. In the impugned order, a sum of Rs.16,97,842/- payable to the petitioner towards his retiral benefits has also been with held.

4. So far as the recovery element is concerned, the petitioner is no way responsible for fixation of pay or they did not contribute for the fixation of pay or grade pay allowed to them. Hence, the petitioner's case is 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)*



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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.”

5.The recovery is sought to be made after five years. Hence, the recovery would fall under clauses (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. Since the impugned order has been given without putting the petitioner on notice, the same is liable to be set aside. Hence, the same shall be done, after issuing notice to the petitioner and giving him an



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opportunity to make his submission. The rightful course that might be open to the second respondent is to seek clarification or raise audit objection and then send the proposal to the respondents 1, 3 and 4 and get it clarified and thereafter pass orders.

7. In view of the above observation, this Writ Petition is **allowed** and the impugned order of the second respondent dated 02.09.2022 is set aside. The second respondent is permitted to raise audit objection or clarification from the respondents 1, 3 and 4. On receipt of the same, the respondents 1, 3 and 4 shall clarify the audit objection/clarification and resubmit the proposal in order to enable the second respondent to pass an order afresh on the pension proposal submitted in respect of the petitioner. No Costs.

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NCC: Yes/No
Index : Yes/No

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R.N.MANJULA, J.

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