

W.P.No.38650 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.38650 of 2016

and

W.M.P.No.33109 of 2016

A.Saradha Gnaneswari,
W/o.Ananda

... Petitioner

Vs.

1.The Director,
School Education Department,
DPI College Road, Chennai – 600 005.

2.The Chief Educational Officer,
Thiruvallur District.

3.The Finance and Chief Account Officer,
Audit of School Education,
Chennai – 600 006.

4.The Head Master,
Government Higher Secondary School,
Guruvoyal, Thiruvallur District - 600 052.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 4th respondent in his order in Na.Ka.No.36/2016 dated 29.07.2016 quash the same and consequently direct the respondents to permit



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the petitioner to continue her service with all benefits based on the 1st respondent's order in Na.Ka.No.083158/K/E1/2009 dated 20.11.2015.

For Petitioner : No appearance
For Respondents :
For R1 to R3 : Mr.S.Prabhakaran
Government Advocate

ORDER

There is no representation on behalf of the Petitioner. However, the issue in this Writ Petition pertains to denial of incentive increments given to the Petitioner from the period between 01.06.2006 and 01.04.2016.

2. By the Impugned Order dated 29.07.2016, the 4th Respondent cancelled the incentive increments given to the Petitioner from 01.06.2006 and ordered for recovery of a sum of Rs.1,66,994/- from the Petitioner which was paid in excess to the Petitioner.

3. The issue in this Writ Petition is covered against the Department and in favour of the Petitioner in terms of the decision of the Hon'ble Supreme Court in **State of Punjab and others Vs Rafiq Masih (White Washer) and others**, 2015 (4) SCC 334.

4. The ratio in **Rafiq Masih (White Washer) case** (*cited supra*) is



captured in Paragraph No.18 of the Judgment. Paragraph No.18 of the

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Judgment in the aforesaid case reads as follows:-

“18. 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 hereinabove, 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 recovery



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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.”

(emphasis supplied)

5. In accordance to the aforesaid decision of the Hon'ble Supreme Court, 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 is impermissible in law.

6. Needless to state, recovery if any made from the Petitioner shall be refunded back to the Petitioner within a period of thirty (30) days from the date of receipt of a copy of this order.

7. This Writ Petition stands allowed with the above observations. No costs. Connected Writ Miscellaneous Petition is closed.

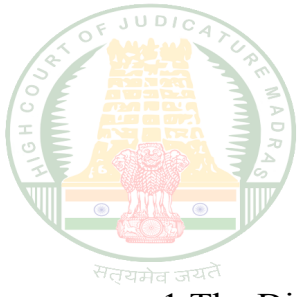
24.04.2025

Neutral Citation : Yes / No

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To:

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C.SARAVANAN, J.

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