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W.P. No.28716 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.28716 of 2014

and

M.P.No.1 of 2014

K.S.Krishnan

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Krishnagiri,
Krishnagiri District.

2.The Assistant Elementary Educational Officer,
Kaveripattinam,
Krishnagiri,
Krishnagiri District.

3.The Sub Treasury Officer,
Krishnagiri,
Krishnagiri District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari, calling for the records of the second respondent relating to order dated 15.09.2014, regarding recovery of Rs.1,31,286/- from the petitioner, to quash the same.

For Petitioner : Ms.T.Subhiksha for Mr.M.Ravi



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W.P. No.28716 of 2014

For R1 & R2 : Mr.S.Prabhakaran
Government Advocate.

ORDER

Today, it is informed by the learned counsel for the respondents that the writ petitioner died on 21.05.2018 during the pendency of the present writ petition. Upon learning the same, the learned counsel for the petitioner was taken by surprise.

2. The writ petition is of the year 2014. This Court is of the view that the issue can be settled, as the law on the subject has been clarified by the Hon'ble Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***. In para 18 of the Judgment, the Hon'ble Supreme Court has clarified the decision 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



WEB COPY



W.P. No.28716 of 2014

order of recovery.

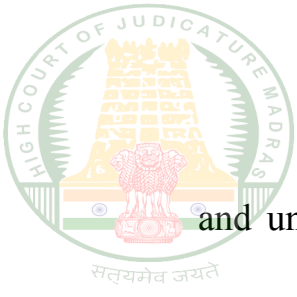
(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(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 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.”

3. The undisputed facts of the case are that the petitioner had attained the age of superannuation and retired from service on 31.05.2000, after serving as Headmaster of Panchayat Union Primary School, Moranahallai. However, the impugned recovery notice has been issued to the petitioner on 15.09.2014 to recover a sum of Rs.1,31,286/-.

4. The paragraph No.18 (ii) of the aforesaid Judgment of the Hon'ble Supreme Court, which has been extracted above, makes it clear that no recovery from the retired employees, or the the employees who are due to retire within one year, can be made under an order of recovery . Therefore, the impugned recovery notice dated 15.09.2014 has to be declared as unjust



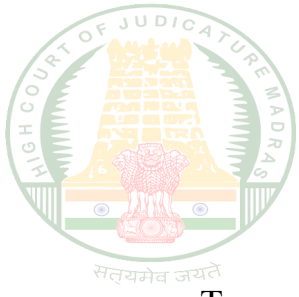
W.P. No.28716 of 2014

and unwarranted and is liable to be quashed. Consequently, the impugned recovery notice is quashed and the legal heirs of the deceased petitioner are permitted to apply for reimbursement of the amount, recovered from the petitioner, if any.

5. Accordingly, this writ petition is disposed of. The connected miscellaneous petitions, if any, shall stand closed. No costs.

28.02.2025

Index : Yes/No
Speaking Order : Yes/No
dpa



W.P. No.28716 of 2014

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C.SARAVANAN,J.

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WEB COPY



W.P. No.28716 of 2014

W.P.No.28716 of 2014

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