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W.P.No.22206 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2025

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.22206 of 2025

and

W.M.P.Nos.24979, 24980 and 24981 of 2025

V.Jayalakshmi

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Deputy Secretary to Government,
School Education Department, Secretariat,
Fort St.George, Chennai – 600 009.
2. The Director of Elementary Education,
College Road, Chennai – 600006.
3. The District Educational Officer (Elementary),
Hosur,
Krishnagiri District.
4. The Block Educational Officer,
Shoolagiri Union,
Krishnagiri District.
5. The Principal Accountant General
(Accounts & Entitlements), Tamil Nadu
No.361, Anna Salai,
Teynampet, Chennai – 600 018.

... Respondents



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WEB COPY Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records which culminated in passing the first respondent Letter No.11100/Ele.Edn1(1)2023-1 dated 15.12.2023 and consequential fourth respondent in his proceedings Na.Ka.No.574/A4/2024 dated 05.05.2025 and quash the same and consequently directing the respondents to settle the retirement benefits including regular pension to the petitioner as on the date of retirement on 31.05.2025 and all consequential benefits including the death cum retirement gratuity (DCRG), within a time to be fixed by this Court.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.S.Prabhakaran,
Government Advocate (for R1 to R4)
Mr.P.Manorajan,
Standing Counsel (for R5)

ORDER

The instant writ petition has been filed challenging the order dated 05.05.2025.

2. Heard the learned counsel for both sides and perused the materials available on record.



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3. The learned counsel for the petitioner would submit that the petitioner retired from service as Headmistress on 30.11.2024, and was permitted an extension of service up to 31.05.2025. After her retirement, vide impugned order dated 05.05.2025, the fourth respondent had re-fixed her pay with effect from 14.10.2018, and ordered recovery of the alleged excess amount paid beyond the petitioner's entitlement with effect from 01.01.2006. The learned counsel further contended that the pay re-fixation was made administratively and there was no misrepresentation on her part. It is the further submission of the learned counsel that before passing any re-fixation order, the fourth respondent had not given any notice to the petitioner. Therefore, *ipso facto*, the impugned order is issued in violation of the principles of natural justice. In support of his contention, the learned counsel for the petitioner relied upon the judgement of the Hon'ble Supreme Court of India in ***Jogeswar Sahoo & Ors. Vs. The District Judge, Cuttack & Ors (SLP(C) No.5918 of 2024 dated 04.04.2025)***. Hence, prayed to interfere with the impugned order.

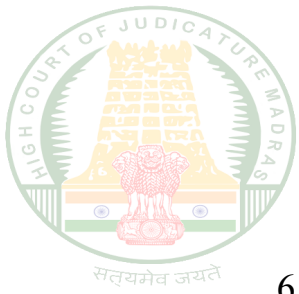


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4. Per contra, the learned Government Advocate appearing for the first to fourth respondents would strongly object to the said contention of the learned counsel for the petitioner and would submit that the pay re-fixation was effected based on the Government Letter dated 15.12.2023, and that while re-fixing her pay in the year 2008, when she was permitted to take up the post of Elementary School Headmistress, there was a wrong fixation. Therefore, the fourth respondent is entitled to recover the said amount from the petitioner. He would further submit that as and when the re-fixation is made, the employee concerned would give an undertaking that if any excess amount is received, they would repay the same. In view of such an undertaking, there cannot be any objection to the petitioner regarding the impugned order. It is the further submission of the learned Government Advocate that in respect of the re-fixation, since it is an expert domain and was fixed based on Government Guidelines, the petitioner cannot challenge the said order, and the same is not amenable to judicial review.

5. I have given my anxious consideration to either side submissions.



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6. The admitted fact of the case is that the petitioner retired on 30.11.2024 as the Headmistress of the Primary School. It is the further admitted fact that the impugned order was issued subsequent to her retirement, viz., after six months. While looking at the impugned order, according to the fourth respondent, the pay ought to have been fixed as 9300 + 34800 + 4500; instead, it has been wrongly fixed as 15600 + 39100 + 5400.

7. Though it is the contention of the learned Government Advocate that there was a wrong fixation, it is not their case that such fixation was made on the misrepresentation of the petitioner or on the basis of the submission of any bogus record. Therefore, it is amply clear that this could only be an administrative lapse for which we could not blame the petitioner. Apart from that, the alleged recovery was ordered to be effected since 2008, which is beyond the period of five years. This issue was dealt with by the judgement of the Hon'ble Supreme Court of India in ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** reported in ***[(2015) 4 SCC 334]***, where it was held that whenever any excess payment was made beyond the period of five years and in the absence of any misrepresentation



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by the employee, the same cannot be recovered. The Hon'ble Supreme Court of India has held that if any recovery is made after a long lapse of time, more than a decade, it would affect their right to life, as the employees would have spent the amount they received, considering it their entitlement.

8. At this juncture, the learned counsel for the petitioner would rely upon the judgement of the Hon'ble Supreme Court in *Jogeswar Sahoo's case* cited supra, wherein, in a recent judgement, the Hon'ble Supreme Court of India reiterated the principles laid down in *Rafiq Masih (White Washer)'s case* cited supra and observed that the Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, or if such excess payment was made by an employer by applying a wrong principle for calculating pay or allowances, or on the basis of a particular interpretation of an order that is subsequently found to be erroneous, such excess payment of emoluments and allowances is not recoverable. Hence, this Court is of the firm view that the order of recovery passed in the impugned order dated 05.05.2025 is liable to be quashed.



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9. Coming to the pay fixation, it is the submission of the learned counsel for the petitioner that before re-fixing the pay, the fourth respondent had not issued any notice calling for her explanation. The factum of issuance of notice could not be found out from the impugned order. At this juncture, the learned Government Advocate would submit that if the matter is remitted back to the fourth respondent, they would give a notice to the petitioner and, after getting an explanation, they would re-fix the pay.

10. In view of the submissions, the impugned order dated 05.05.2025 is hereby quashed, and the matter is remitted back to the fourth respondent, for the purpose of re-fixation. At this juncture, the learned counsel for the petitioner would submit that a sum of Rs.19,23,520/- has already been recovered in pursuance of the order dated 05.05.2025. If such an amount has been recovered from the petitioner, the fourth respondent is directed to refund the same within a period of three months, without any interest. It is made clear that the fourth respondent is directed to complete the exercise of re-fixation within a period of three months from the date of receipt of a copy of this order.



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11. In the result, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No

To

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The State of Tamil Nadu,
School Education Department, Secretariat,
Fort St.George, Chennai – 600 009.
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C.KUMARAPPAN, J.

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