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WP No. 24679 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-09-2025

CORAM

THE HONOURABLE MR.JUSTICE K. SURENDER

**WP No. 24679 of 2017
and WMP.Nos.26045 & 26046 of 2017**

I.Marry Juliet

Petitioner(s)

Vs

1. The State of Tamilnadu
rep. by its Secretary,
Department of School Education,
Secretariat, Fort St. George,
Chennai 600 009.

2.The Director of School
Education, College Road,
Nungambakkam, Chennai-6.

3.The Regional Accounts
Officer (Audit),
School Education Department,
Coimbatore Region, Coimbatore

4.The Chief Educational
Officer, Krishnagiri District,
Krishnagiri.

5.The Headmaster
Government Girls High School,
Seetharam Nagar, Hosur 635 109,
Krishnagiri District

6.The Headmaster
Government High School, Linge
Goundanahalli, Krishnagiri District

Respondent(s)

**PRAYER**

This Writ Petition is filed under Article 226 of Constitution of India seeking Writ of Certiorari calling for the records of recovery order mentioned in the petitioners Last pay Certificate issued by the 5th respondent dated 23.06.2017 and quash the same as illegal.

For Petitioner(s): M/s.Devaraj Mahesh

For Respondent(s): M/s.P.Rajeshwari GA

ORDER

This Writ Petition is filed to quash the recovery order dated 23.06.2017 issued by the fifth respondent.

2. The brief facts of the case are that the petitioner, a Physical Education Teacher, was promoted as BT Assistant and given incentive increments for her M.Phil degree. However, the 5th respondent issued a recovery order, to recover Rs.1,92,501/- paid as incentive increments from 2006 to 2017, citing an audit objection. The petitioner claims that the recovery is illegal, as she was entitled to the increments under G.O.Ms.No.324 dated 25.04.1995. Hence, she filed the present Writ Petition.

3. The learned counsel for the petitioner submitted that the recovery order passed by the fifth respondent is without application of mind and the same is deserves to be set aside. In support of his contentions, the learned counsel also relied on the judgment of The Hon'ble Supreme Court of India, in **STATE OF**



PUNJAB AND OTHERS Vs. RAFIQ MASIH (WHITE WASHER) AND OTHERS (2015) 4 SUPREME COURT CASES 334, wherein in the hon'ble

Apex Court has laid down the following guidelines for effecting recovery:

“12. 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 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 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.”



6. Applying the above judgment to the present facts, the excess payment of Rs.1,92,501/- was paid to the petitioner as incentive increments from 2006 to 2017, a period more than five years. Therefore, recovery is impermissible in law.

7. Accordingly, this **writ petition is allowed** and the order, dated 23.06.2017 passed by the fifth respondent in Proceedings in Na.Ka.03/2017 12551/K3/2016 is hereby quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

“12. 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 few situations, wherein recoveries by the employers, would be impermissible in law:

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(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.”*

6. Applying the above judgment to the present facts, the excess payment of Rs.2,28,004/- was made from 2011 to 2017, a period more than five years. Therefore, recovery is impermissible in law.

7. Accordingly, this **writ petition is allowed** and the order, dated 11.08.2017 passed by the second respondent in Proceedings in N 12551/K3/2016 is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

3. The learned counsel for the petitioner submitted that the second respondent has passed the impugned proceedings without application of mind and the same is deserves to be set aside. In support of his contentions, the learned counsel also relied on the judgment of The Hon'ble Supreme Court of India, in ***STATE OF PUNJAB AND OTHERS Vs. RAFIQ MASIH (WHITE WASHER) AND OTHERS (2015) 4 SUPREME COURT CASES 334***, wherein in the hon'ble



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(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.”

6. Applying the above judgment to the present facts, the excess payment of Rs.2,28,004/- was made from 2011 to 2017, a period more than five years.



Therefore, recovery is impermissible in law.

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7. Accordingly, this **writ petition is allowed** and the order, dated 11.08.2017 passed by the second respondent in Proceedings in N 12551/K3/2016 is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

K.SURENDER, J.
19-09-2025

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Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No



To

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