



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.02.2025

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THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.38616 of 2024
and W.M.P.No.41823 of 2024

V.Palanisamy

.. Petitioner

Vs.

1.The Director of Elementary Education,
DPI Campus,
Chennai – 600 006.

2.The District Educational Officer,
Elementary Education,
Dharmapuri.

3.The Block Educational Officer
Eriyur Union,
Pennagaram Taluk,
Dharmapuri District – 636 810.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent herein in Na.Ka.0932/A2/2022 dated 22.11.2024 and quash the same and consequently, direct the respondents to continue to pay the petitioner the salary as fixed vide the proceedings of the 3rd respondent in Na.Ka.No.1027/A/2014 dated 04.08.2014.



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For Petitioner .. Ms.Dakshayani Reddy, Senior Advocate

For Mr.S.Suneetha

For R1, R2 & R3 .. Ms.Mythraye Chandru,
Special Government Pleader.

ORDER

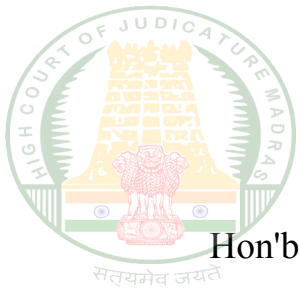
This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records of the 3rd respondent in Na.Ka.No.0932/A2/2022 dated 22.11.2024 and to quash the same and direct the respondents to continue to pay to the petitioner the salary as fixed under the proceedings of the 3rd respondent in Na.ka.No.1027/A/2014 dated 04.08.2014.

2.In the affidavit filed in support of the writ petition, it had been contended by the petitioner that he had been initially appointed as Secondary Grade Teacher on and from 07.10.1996 and subsequently, promoted as Elementary School Headmaster on and from 03.02.2002 and further promoted as Middle School Headmaster on and from 01.06.2012.



The petitioner was entitled to get the benefits of selection grade in the post of Elementary School Headmaster on completion of 10 years of service in that particular post. That period of 10 years would be on 03.02.2012. In the meanwhile, just before that particular date on 23.12.2011 he had been promoted as Middle School Headmaster. It is contended that the petitioner had, therefore, given an option to receive the pay scale in the post of Elementary School Headmaster till 03.06.2012 and on and from that date, he was granted selection grade pay scale as Elementary School Headmaster. He opted to get the pay scale of Middle School Headmaster only on and from 04.06.2012. He had already been granted selection grade in the post of Elementary School Headmaster. He continued with the service and then after a period of 10 years, found to his dismay a notice being issued to him directing that his pay had been wrongly fixed and that he must repay back a sum of Rs.4,62,222/-. That particular order dated 22.11.2024 is put to test in this present writ petition.

3.The learned Senior Counsel for the petitioner placed strong reliance on the judgment of the Hon'ble Supreme Court in ***Civil Appeal No.1635 of 2013, Jagdish Prasad Singh Vs. State of Bihar and others***, wherein the



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Hon'ble Supreme Court had an occasion to examine the ratio laid down in an earlier judgment of the Hon'ble Supreme Court in ***State of Punjab and others v. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334***. The Hon'ble Supreme Court considered the issue, wherein public servants were issued with notices of recovery of emoluments which according to the respondents had been wrongly paid. Taking note of the fact that such recovery would affect their financial status and more particularly, if had been issued without prior notice would violate the principles of natural justice, a series of guidelines had been issued as to the conditions under which such recovery order could be passed by the respondents.

4. In ***State of Punjab and others v. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334***, the Hon'ble Supreme Court had given the following directions:

“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 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.”

5. In the judgment under reference ***Jagdish Prasad Singh*** referred *supra*, the Hon'ble Supreme Court also referred to yet another judgment of the Hon'ble Supreme Court in ***Thomas Daniel v. State of Kerala and***



Others reported in 2022 SCC OnLine 536, wherein it had been held that the State cannot recover excess amount paid to an ex-employee after a delay of 10 years.

6. In the instant case, the learned Senior Counsel pointed out that even according to the respondents this pay fixation was done in the year 2012 – 13 and the order impugned came to be passed in the year 2024 well after 10 years and more importantly without any prior notice.

7. In ***Jagdish Prasad Singh*** referred *supra*, the Hon'ble Supreme Court had widened the grounds under which such recovery should be frowned upon by the Courts by further holding as follows:

“26.The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained.”



8.It is thus evident that prior notice is mandatory and that should have been issued to the petitioner herein.

9.In the counter affidavit filed by the 3rd respondent, after justifying the recovery made and the grounds on which such recovery had been made, it had also been stated that the order passed by the 3rd respondent is valid and legal. It had been stated that the order had been passed in strict compliance of the Government order and rules. But however, the issue of prior notice has not been specifically answered in the counter affidavit.

10.A perusal of the record show that prior notice had not been issued before the impugned order was passed. It would only be appropriate that the petitioner is given an opportunity to explain the option which had been exercised by him at the time when he was promoted as Middle School Headmaster and the right to exercise such option and the fact that such exercise was legally permissible. The petitioner could also take up the stand of the delay in passing order of recovery particularly well after the period stipulated in the judgment of the Hon'ble Supreme Court which are binding in nature.



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11.The impugned order therefore suffers from non-issuance of prior notice and therefore, it is set aside. I am making it clear that I am not entering into any discussion of the merits of the contention raised by the respondents justifying the recovery. But let a notice be issued in the first instance and opportunity be granted to the petitioner to reply to such notice and thereafter, the respondents may, after following due procedure, pass appropriate orders.

12.With the above reasonings, this Writ Petition stands disposed of.
No costs. Consequently, connected Writ Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No



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C.V.KARTHIKEYAN,J.

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