

W.P.(MD)No.8365 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.03.2025

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.8365 of 2025
and
W.M.P(MD)No.6252 of 2025

M.Inbajothi

... Petitioner

Vs.

1.The District Adi Dravidar and Tribal Welfare Officer,
Thanjavur

2.The Head Master,
Government High School (ADW),
Kalloranikaadu,
Peravoorani Taluk,
Thanjavur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the second respondent i.e., the Head Master, Government High School (ADW), Kalloranikaadu, in his Na.Ka.42/2024 dated 02.04.2024 and quash the same.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.T.Amjad Khan
Government Advocate



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ORDER

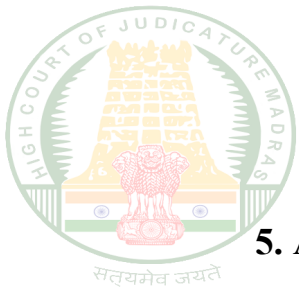
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The present writ petition has been filed challenging the order of the second respondent, dated 02.04.2024.

2. The case of the petitioner is that she was worked as BT Assistant. She was sanctioned incentive increment for passing M.A., Degree from the year 1998 by the second respondent. As per G.O.(Perm)No.83, School Education Department, dated 28.04.2017, the above said incentive increment has to be sanctioned only from the date of the said G.O. But she has been sanctioned with the incentive increment from the year 1998. Based on audit objection, the second respondent vide order, dated 02.04.2024 issued an order of recovery. Aggrieved by the same, the petitioner filed this writ petition.

3. Heard the submissions made by the respective learned counsels and carefully perused the materials available on record.

4. The only issue to be considered in this writ petition is whether the second respondent is entitled to recover the an amount of Rs.1,73,123/-.



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5. Admittedly, the petitioner is working as Secondary Grade Teacher. She was sanctioned incentive increment for passing M.A., Degree from the year 1998. The Government issued G.O.(Perm)No.83, School Education Department dated 28.04.2017 granting incentive increment only from the date of the said G.O i.e on 28.04.2017. As the petitioner was granted incentive increment from the year 1998 much earlier to the said Government Order and in view of the fact that the petitioner is a Group-C employee, the respondents are not entitled to initiate proceedings for recovery of the amount paid to the petitioner towards incentive increment prior to issuance of G.O.(Perm)No.83, School Education Department dated 28.04.2017.

6. Considering the facts and circumstances of the case, this Court is of the considered opinion that the second respondent is not entitled to recover the amount from the petitioner in the light of settled law on this issue.

7. In fact, on several occasions, identical issue came up for consideration before this Court. By following the proposition of law laid down by the Hon'ble Apex Court reported in **2015 (4) SCC 334 (State of Punjab & Others Vs. Rafiq Masih(White Washer) & Others)**, this Court set aside the proceedings of



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recovery in W.P.No.6945 of 2022, dated 26.06.2023 and in W.P(MD)No.16106

of 2016, dated 20.07.2023. The relevant portion of the judgment of the Hon'ble

Apex Court in **Rafiq Masih (White Washer)** (supra), is extracted herein under:

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

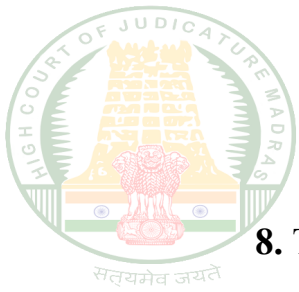
(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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 employers right to recover.”



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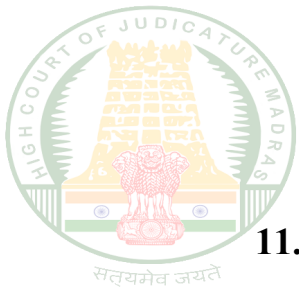
8. The guidelines as relevant to the present case are that no recovery to be initiated from employees belonging to Class-III and Class-IV service (or Group C and Group D service) and no recovery from employees, when the excess payment to be made for a period in excess of five years, before the order of recovery is issued. Thus, the impugned order is un-sustainable.

9. The Hon'ble Apex Court in **Thomas Daniel** case, while considering identical issue, held as extracted herein under:

“(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.”

10. This Court in W.P.(MD) No.17154 of 2016 and W.P.(MD) No.22395 of 2016, while dealing the identical issues, has set aside the orders for recovery impugned therein.



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11. On consideration of the facts and circumstances of the present case and in the light of the authorities stated supra, this Court has no hesitation to hold that the action of the second respondent in issuing the impugned order for recovery is illegal, arbitrary, unjust and in violation of the principles of natural justice and accordingly, the impugned order is liable to be set aside.

12. For the above reasons, the Writ Petition is allowed with the following directions: -

i) The order in Na.Ka.42/2024 dated 02.04.2024 issued by the second respondent is hereby set aside.

ii) Any amount recovered from the petitioner or arrears if any, shall be paid within six (6) weeks from the date of receipt of a copy of this order.

No costs.

Consequently, connected miscellaneous petition is closed.

26.03.2025

NCC:yes/no
Index:yes/no
Internet:yes/no
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To:

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- 2.The Head Master,
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BATTU DEVANAND, J.

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