



W.A.(MD).No.2416 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

W.A.(MD).No.2416 of 2024
and
C.M.P.(MD).No.16719 of 2024

1.The District Collector and Secretary,
Muqyyath Sha Sirguro,
Wakf Board College,
Madurai - 625 020.

2.The Principal,
Muqyyath Sha Sirguro,
Wakf Board College,
Madurai - 625 020.

... Appellants/Respondents 2 & 3

Vs.

1.K.Maheswari,
Assistant Professor SG,
English Department,
Muqyyath Sha Sirguro,
Wakf Board College,
Madurai – 625020.

... 1st Respondent/Petitioner

2.The Joint Director of Collegiate Education,
Madurai Region,
Door No.268, Paalam Station Road,
Sellur,
Madurai - 625 002.

... 2nd Respondent/1st Respondent



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to allow the Writ Appeal by setting aside the order passed in W.P.(MD).No.29154 of 2023, dated 29.04.2024.

For Appellants : Mr.S.P.Maharajan
For R-1 : Mr.V.Veerapandian
for M/s.Vast Law Associates
For R-2 : Mr.J.Ashok
Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by M.S.RAMESH,J.)

This Writ Appeal has been filed against the order of the learned Single Judge in W.P.(MD).No.29154 of 2023 dated 29.04.2024.

2. The cancellation of the incentive increment based on a Government Order and consequential recovery proceedings of the excess payment made was the subject matter before the Writ Court. The learned Single Judge had placed reliance on the decision of the Hon'ble Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696*** and allowed the Writ Petition. This order is put under challenge in the present appeal.



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3. The learned counsel for the appellants would submit that since the delay in claiming refund of the excess payment made was based on audit objections, the law laid down by the Hon'ble Supreme Court in *White Washer's* will not be applicable to the present case. This apart, he would also submit that the delay is only 5 years and 40 days and therefore, the delay of 40 days could be condoned.

4. Per contra, the learned counsel for the first respondent would submit that the dictum laid down in *White Washer's* case has been clearly violated in the instant case and since the learned Single Judge had also placed reliance on the same and allowed the Writ Petition, no interference is required to the same.

5. Heard the learned counsels and perused the materials available on record.

6. The learned Single Judge had placed reliance on the decision of the Hon'ble Supreme Court in *White Washer's* case and held that the recovery of excess payment made, which was based on audit objections, over and above a period of five years, is impermissible in law. The law laid down by the Hon'ble Supreme Court in *White Washer's* case has been consistently reiterated by the



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Hon'ble Supreme Court in several of its other decisions, as well as by this Court by holding that when anyone of the circumstances pointed out in *White Washer's* case is violated, the consequential recovery proceedings is impermissible in law.

7. The learned Single Judge had taken into account that the appellants herein had initiated the recovery proceedings only on the basis of audit objections and since it was over the period of five years, had allowed the Writ Petition. Since the order is well in conformity with the law laid down by the Hon'ble Supreme Court in *White Washer's* case, we do not find any reason to interfere with the same.

8. The learned Single Judge had also taken note of the fact that before the impugned recovery was sought to be made, the first respondent herein was not put on notice and therefore, had allowed the Writ Petition on the ground of violation of the principles of natural justice also. In our view, such a finding is well substantiated and on this ground also, the Writ Appeal does not deserve consideration.



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9. Accordingly, the Writ Appeal stands dismissed. There shall be no order

as to costs. Consequently, connected miscellaneous petition stands closed.

(M.S.R.,J.) (A.D.M.C.,J.)
24.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

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