



W.A(MD)No.2144 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	12.11.2024
Pronounced on	27.11.2024

CORAM :

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

W.A(MD)No.2144 of 2024

and

CMP(MD)No.15125 of 2024

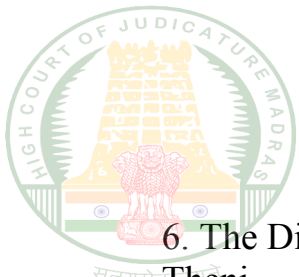
1. The State of Tamil Nadu,
Rep by its Principal Secretary to Government,
School Education Department,
Fort. St. George, Secretariat,
Chennai-9.

2. The Director of School Education,
School Education Department,
Chennai-9.

3. The Joint Director (Vocation AI) Education,
School Education Department,
College Road,
Chennai -600 006.

4. The Chief Accounts Officer,
Commissioner of School Education,
Chennai 600 006.

5. The Chief Educational Officer,
Theni,
Theni District.



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6. The District Educational Officer,
Theni,
Theni District.

7. The Headmaster,
Government Model Higher Secondary School,
Silvarpatti, Periyakulam Taluk,
Theni District.

... Appellants

vs.

V.Venkatesan

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 01.07.2024 made in W.P(MD)No.14028 of 2024.

For Appellants : Mr.J.Ashok
Additional Government Pleader
For Respondent : Mr.M.Mohamed Zamil

JUDGMENT

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

Through G.O(Ms)No.26, School Education (SE7-1) Department, dated 12.02.2019, the post of Computer Instructor in the B.T. Cadre, was re-designated as Computer Instructor Grade-II and the scale of pay was also revised accordingly. As per the said Government Order, the 3rd appellant / Joint Director (Vocational Education), School Education Department, had upgraded

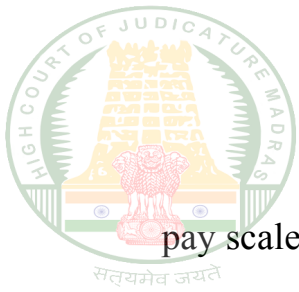


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the post of Computer Instructor Grade-II as Computer Instructor Grade-I through his proceedings dated 18.11.2020. However, subsequently, audit objections were raised to the effect that the post of Computer Instructor Grade-I was not a case of promotion, but only upgradation. Based on the audit objections, the Headmaster of the 7th appellant school had passed the proceedings dated 12.06.2024, demanding recovery of the excess amount paid to the respondent.

2. When the proceedings of recovery were challenged by the respondent herein, before this Court in W.P(MD)No.14028 of 2024, a learned Single Judge of this Court had placed reliance on the earlier orders of this Court in a batch of cases in *W.P.No.27205 of 2024 etc., batch dated 08.03.2024*, in the case of *M.Rajamohan vs. The Government of Tamil Nadu, represented by its Secretary, School Education Department and others*, and quashed the proceedings of the 7th appellant dated 12.06.2024 and thereby allowed the writ petition. Aggrieved by the said order, the official respondents therein, have challenged the Writ Court's order in this intra-court appeal.

3. The learned Additional Government Pleader appearing for the appellants submitted that the respondent herein, at the time of revision of his

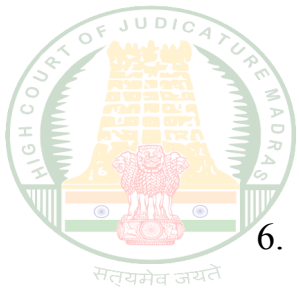


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pay scale, had given an undertaking that any payment found to have been made in excess, would be refunded by him and therefore, he is estopped from challenging the order of recovery. For such a proposition, he placed reliance on a decision of the Hon'ble Supreme Court in the case of ***High Court of Punjab and Haryana and others vs. Jagdev Singh*** reported in (2016) 14 SCC 267.

4. Per contra, the learned counsel appearing for the respondent placed reliance on a judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer)*** reported in (2015) 4 SCC 334 and submitted that when payments have mistakenly been made by an employer, the Hon'ble Supreme Court had set forth certain situations whereby, such recovery would be impermissible in law and therefore, the very order of recovery cannot be legally sustained. In this regard, he also placed reliance on a decision of the Hon'ble Supreme Court in ***Jagdish Prasad Singh vs. State of Bihar and others*** reported in 2024 SCC OnLine SC 1909.

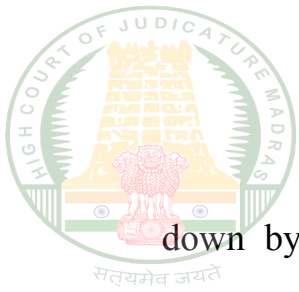
5. We have given our anxious consideration to the submissions made on either side.



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6. This is not an isolated case of Computer Instructors in a Higher Secondary School, who were paid higher pay on upgradation of their posts from Computer Instructors Grade-II to Computer Instructors Grade-I and when recovery was sought to be made by the concerned Headmaster of the school based on the local audit objections, this Court had intervened and set aside such orders, by holding that the recovery in the given case was impermissible in law. A few of such cases were decided in a batch of writ petitions in the case of ***M.Rajamohan vs. The Government of Tamil Nadu, represented by its Secretary, School Education Department and others [W.P.No.27205 of 2024 etc., batch, dated 08.03.2024]***. The Writ Court had quashed all the orders of recovery in those cases and these orders have also become final.

7. The Hon'ble Supreme Court in the case of ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava*** reported in (2015) 1 SCC 347, has held that in service jurisprudence, when one set of employees are granted benefits through Court orders, the similarly placed employees would also be entitled to receive the same benefits, lest it would amount to discrimination. It is not in dispute that the Computer Instructors Grade-I in the above referred batch of writ petitions relied upon by the learned Single Judge, are similarly placed with that of the respondent herein and thus, by applying the ratio laid



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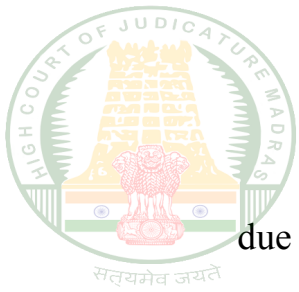
down by the Hon'ble Supreme Court in *Arvind Kumar Srivastava's case*,
recovery of the alleged excess payment would be impermissible from him.

8. This apart, the order which was impugned in the writ petition, was made without issuing any prior show cause notice of the proposed action of recovery. Such procedure would be in violation of the principles of natural justice and hence, the order itself is deemed to be illegal and on this ground also, the order of recovery is liable to be quashed.

9. Above all, the Hon'ble Supreme Court in **White Washer's case (supra)**, had set forth recoveries in five situations as impermissible in law. Following is the relevant portion of the judgment in **White Washer's case (supra)**:

"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



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due to retire within one year, of the order of recovery.

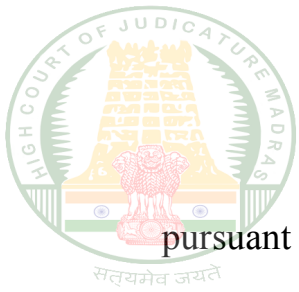
(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(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 employer's right to recover."

10. Clause (iii) and clause (v) of the judgment in **White Washer's case (supra)**, would be applicable to the instant case. When clause (iii) above is applied to the facts of the present case, it is seen that the alleged excess payment was made in the year 2018 and the recovery of the excess payment was ordered in the year 2024, which is over and above five years from the order of recovery.

11. Likewise, when clause (v) as above is applied to the present case, it could be seen that the present order of recovery itself would be iniquitous, since identically placed Computer Instructors Grade-I, whose pay were also revised

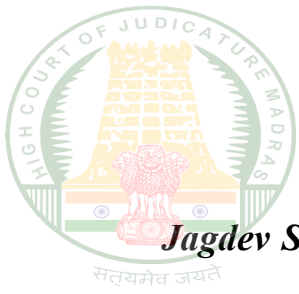


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pursuant to their upgradation of the post and their recovery orders of the excess payment, were quashed by this Court, whereas, the appellants are pursuing the case of the respondent herein, without reference to the benefits extended to the identically placed employees. Likewise, the order of recovery would be harsh and arbitrary, since no prior opportunity was given to the respondent herein, before the order of recovery was passed, thereby denying him an opportunity of putting forth his valid objections. In line with the decision in **White Washer's case (supra)**, the order of recovery in the present case deserves to be set aside on this ground also.

12. The learned Additional Government Pleader had placed reliance on **Jagdev Singh's case (supra)** and submitted that the law laid down in **White Washer's case (supra)** will not apply to the present case, since the respondent herein, had given an undertaking that he would not claim the excess payment, if found to have been made at a later stage. **Jagdev Singh's case (supra)** when analysed, did not dilute the proposition of law set forth in **White Washer's case (supra)**, but rather had distinguished the facts in that particular case and held that clause (ii) therein, which relates to recovery from retired employees or employees who are due to retire within one year of the order of recovery, would not be applicable, since the employee therein, was clearly placed on notice.



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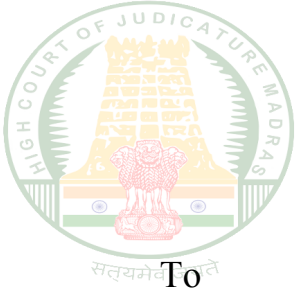
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Jagdev Singh's case (supra) was not confronted with the two situations which are present in the case before us, namely that this Court had quashed similar recovery orders in the case of several identically placed Computer Instructors Grade-I through the orders passed in W.P.No.27205 of 2024 etc., batch, dated 08.03.2024. Likewise, the order of recovery was made in violation of the principles of natural justice, which fact was also not dealt with in that case. If and when these aspects are applied to the situations in the present case, the facts in *Jagdev Singh's case (supra)* are clearly distinguishable and hence, may not help the demur of the appellants in this regard.

13. The learned Single Judge had relied on the orders passed in similar cases of Computer Instructors Grade-I and quashed the recovery order. We do not find any illegality in it and hence the order impugned before us, does not warrant interference. For all the foregoing reasons, the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(M.S.R, J.) (A.D.M.C, J.)
27.11.2024

Index : Yes / No
Neutral Citation : Yes / No
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State of Tamil Nadu,
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M.S.RAMESH, J.
and
A.D.MARIA CLETE, J.

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PRE-DELIVERY JUDGMENT
MADE IN
W.A(MD)No.2144 of 2024
DATED : 27.11.2024