



W.P.(MD)No.18755 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.18755 of 2023

and

W.M.P(MD)Nos.15592 & 15593 of 2026

and

W.M.P(MD)No.1386 of 2024

K.K.Muthulakshmi

... Petitioner

Vs.

1.The Director of School Education,
College Road, Chennai-600 006.

2.Finance Consultant and Chief Audit Officer,
Commissioner of School Education Office,



W.P.(MD)No.18755 of 2023

WEB COPY Chennai-600 006.

3.The Chief Educational Officer,
Madurai, Madurai District.

4.The District Educational Officer,
(Secondary),
Melur, Madurai District.

5.Correspondent,
R.C.High School,
Kathakinaru, Madurai East,
Madurai District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent Finance Consultant and Chief Audit Officer in Na.Ka.No.053130/2023 dated 24.03.2023 and the consequential impugned letter of 5th respondent school received on 19.06.2023 (Cancelling the two advance increment sanctioned to the petitioner for acquiring higher qualification of M.A.degree in Tamil) quash the same and further direct the respondents herein to restore the



W.P.(MD)No.18755 of 2023

WEB COPY

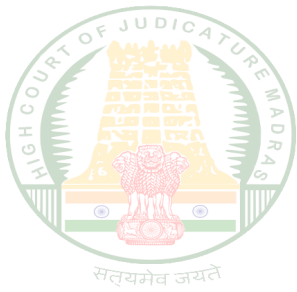
incentive increment granted to the petitioner for M.A.degree in Tamil, with all consequential and attendant benefits.

For Petitioner : M/s.A.Amala
For R1 to R4 : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

The present writ petition has been filed challenging the proceedings bearing Na.Ka.No.053130/2023 dated 24.03.2023, whereby the pay of the petitioner, who was working as BT Assistant (Tamil), was refixed consequent to the cancellation of incentive increments that had been granted in her favour.

2. The petitioner is stated to have already submitted an application for voluntary retirement; however, she has not been permitted to proceed with the same due to the pendency of the present writ petition.



W.P.(MD)No.18755 of 2023

WEB COPY

3. In the light of the above and the various orders passed by this Court, the learned counsel for the petitioner submitted that the petitioner does not intend to press the challenge regarding the re-fixation of pay. However, it was contended that the recovery sought to be effected through the impugned proceedings is contrary to the orders passed by the Hon'ble Apex Court in the case of *State of Punjab and others vs. Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334*. Thus, she contended that no recovery can be effected from the petitioner under the guise of the impugned proceedings.

4. On the other hand, Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the respondents, submitted that the petitioner is still in service and in terms of the order passed by the Hon'ble Apex Court in the case of *State of Punjab and others vs. Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334*, the respondents



W.P.(MD)No.18755 of 2023

WEB COPY

are entitled to recover the amounts paid to the petitioner in excess of her entitlement for a period of five years prior to the date of the impugned order.

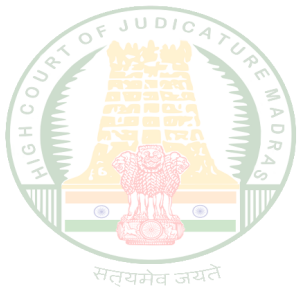
This Court has carefully considered the submissions made on either side and also perused the entire material on record.

Paragraph No.18 of the judgment in Rafiz Masih case is relevant and the same is extracted hereunder:-

“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.



W.P.(MD)No.18755 of 2023

WEB COPY

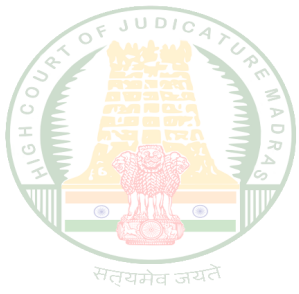
(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

5. From a perusal of Clause (iii) of Para 18 above, it is evident that amounts paid in excess of the entitlement of a Government servant, for a period beyond five years, are not permissible to be recovered.

6. Mr. N. Satheesh Kumar, learned Additional Government Pleader appearing for the respondents, brought to the notice of this Court

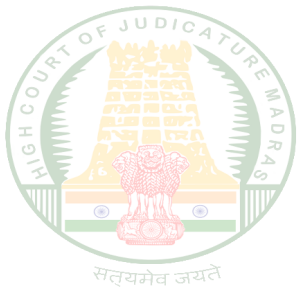


W.P.(MD)No.18755 of 2023

WEB COPY

the order passed in W.P. (MD) No.1292 of 2025, dated 04.06.2025, where a learned Division Bench of this Court considered an identical issue and held as follows:

*“4. There is no serious dispute that the pay of the first respondent was erroneously fixed. The only question that calls for consideration is whether when the first respondent was not at fault, recovery could be ordered at this point of time. It is true that the Hon'ble Supreme Court in the decision reported in (2015) 4 SCC 334 (State Of Punjab & Ors vs Rafiq Masih) had held that recovery from the employees when the excess payment has been made for a period in excess of 5 years, it is impermissible. But then, this is a continuing cause of action. Therefore, while the excess payment made from the year 2006 to 2019 cannot be ordered to be recovered, the excess payment received by the first respondent for the period of 5 years prior to 29.04.2024 can very well be ordered to be recovered and the parameter laid down in the **White Washer's case** may not come to the first respondent's rescue. The order is accordingly modified. We permit the appellants to recover the excess payment received by the writ petitioner / first respondent herein for a period of 5 years prior to 29.04.2024. The first respondent will pay only the refixed*

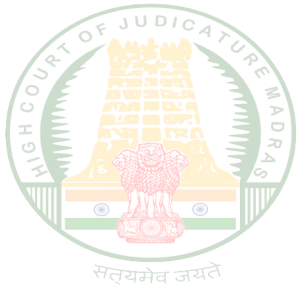


W.P.(MD)No.18755 of 2023

WEB COPY *pension amount with effect from 29.04.2024.”*

7. In the light of the above and in the context of the fact that the re-fixation has been accepted by the petitioner, the right of the respondents to recover the excess amount paid to the petitioner due to erroneous grant of incentive increment for a period beyond 5 years i.e. 5 years prior to the date of impugned proceedings cannot be recovered. In those circumstances, following the decision of the Hon`ble Apex Court and the learned Division Bench referred to above, the impugned proceeding is quashed only to the extent of ordering for recovery of amounts paid five years prior to the date of issuance of impugned proceedings i.e., the amount that were paid to the petitioner prior to 23.03.2018. In other words, the amounts that were paid to the petitioner prior to 23-3-2018 shall not be recovered and the amounts that were paid from 24-03-2018 can only be recovered under the impugned proceedings.

8. Accordingly, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.



WEB COPY



W.P.(MD)No.18755 of 2023

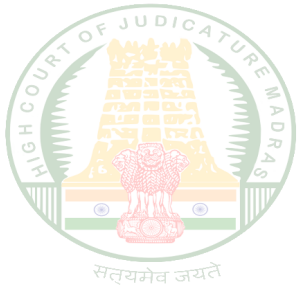
30.04.2026

Neutral Citation: Yes / No
Index : Yes / No
am

To

- 1.The Director of School Education,
College Road, Chennai-600 006.
- 2.Finance Consultant and Chief Audit Officer,

Page 9 of 11



W.P.(MD)No.18755 of 2023

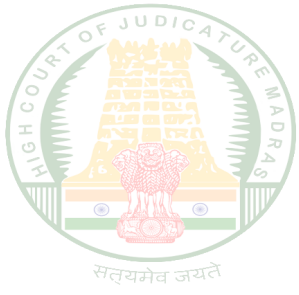
WEB COPY

Commissioner of School Education Office,
Chennai-600 006.

- 3.The Chief Educational Officer,
Madurai, Madurai District.
- 4.The District Educational Officer,
(Secondary),
Melur, Madurai District.

MUMMINENI SUDHEER KUMAR, J.

am



WEB COPY



W.P.(MD)No.18755 of 2023

W.P.(MD)No.18755 of 2023

30.04.2026