



2023:KER:32561

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

TUESDAY, THE 6TH DAY OF JUNE 2023/16TH JYAISHTA, 1945

OP(KAT) NO.95 OF 2023

AGAINST THE ORDER/JUDGMENT DATED 07.11.2017 IN OA 874/2016 OF

KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS 1 TO 5 IN O.A:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001, KERALA.
- 2 THE DIRECTOR OF GENERAL EDUCATION,
THIRUVANANTHAPURAM,
(FORMERLY KNOWN AS THE DIRECTOR OF PUBLIC
INSTRUCTIONS, THIRUVANANTHAPURAM),
KERALA, PIN - 695001.
- 3 DEPUTY DIRECTOR OF EDUCATION,
KANNUR, KERALA, PIN - 670001.
- 4 DISTRICT EDUCATIONAL OFFICER,
TALIPARAMBA, KANNUR, KERALA, PIN - 670001.
- 5 HEADMASTER, G.H.S.S., MATHAMANGALAM, M.M.BAZAR.P.O,
KANNUR, KERALA, PIN - 670306.

BY ADV.

ADV. SRI.SAIJI JACOB PALATTY, SR.GOVERNMENT PLEADER

RESPONDENT/APPLICANT IN O.A.:

SEENA.M., AGED 37 YEARS,
W/O.V.SAGAR, P.D.TEACHER, G.H.S.S, MATHAMANGALAM,
M.M.BAZAR.P.O, KANNUR 670306,



2023:KER:32561

O.P(KAT) No.95 of 2023

RESIDING AT PUNIYAMKODE, M.M.BAZAR.P.O,
KANNUR, KERALA.

BY ADVS.
KALEESWARAM RAJ
THULASI K. RAJ(K/000814/2015)
APARNA NARAYAN MENON(K/385/2021)
CHINNU MARIA ANTONY(K/3363/2022)

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP
FOR ADMISSION ON 06.06.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



ALEXANDER THOMAS & C.JAYACHANDRAN, JJ.

OP (KAT) No.95 of 2023

*(against the order dated 07.11.2017 in O.A. No. 874/2016 of Kerala
Administrative Tribunal, Thiruvananthapuram)*

Dated this the 6th day of June, 2023

JUDGMENT

C.Jayachandran, J.

Respondents 1 to 5 in O.A.No.874 of 2016 of the Kerala Administrative Tribunal, Thiruvananthapuram are the petitioners herein. The above original petition is preferred challenging the order dated 07.11.2017 of the Tribunal in the O.A. afore referred, as per which, Ext.P1 original application preferred by the sole respondent herein challenging Annexure-A9 order directing recovery of excess pay was allowed, holding that no recovery can be made.

2. The facts:

As per Annexure-A1 order dated 02.01.2004, the applicant was advised and appointed as PD Teacher. As per Annexure-A2 application dated 08.06.2004, the applicant (respondent herein) applied for Leave Without Allowance to join B.Ed. course under Rule 91 of Part I, KSR. Accordingly,



the applicant secured admission to B.Ed. course for the period from 15.06.2004 to 29.03.2005. However, the Leave Without Allowance was allowed belatedly, vide Annexure-A3 order dated 17.09.2004. The respondent authorities in O.A took a stand that the date of entry into service of the applicant will be taken as 30.03.2005, that is the date on which she rejoined after B.Ed course, thus forfeiting her earlier service. This was challenged by the applicant before this Court and as per Annexure-A4 judgment dated 07.03.2007, the 1st respondent State was directed to take a decision on Ext.P5 representation of the applicant within a period of two months. In compliance of the said direction, the 1st respondent State passed Annexure-A5 order rejecting Ext.P5 representation. As per Annexure-A5, the 1st respondent State found that the applicant had not completed the prescribed years of service, wherefore she was not eligible for Leave Without Allowance for 288 days from 15.06.2004 to 29.03.2005 under Rule 88/91 of Part I, KSR. In the meantime, Annexure-A6 G.O. dated 28.04.2010 was issued by the 1st



respondent Government, as per which, an incumbent who availed Leave Without Allowance prior to 24.05.2005 to undergo B.Ed. course etc., is entitled to reckon his/her leave period for the purpose of increment. Acting upon Annexure-A6, the applicant was granted the benefit of increment. An audit objection came in the year 2013 against reckoning the leave period of the applicant for the purpose of increment.

3. Annexure-A7 representation was preferred by the applicant against the audit objection. However, the same was rejected vide Annexure-A8. Consequently, Annexure-A9 proceedings dated 08.03.2016 was issued by the 3rd respondent/DDE directing to initiate steps for recovering the excess amount paid to the applicant. Relying upon the judgment of the Honourable Supreme Court in **State of Punjab and Others v. Rafiq Masih (White Washer) [(2015) 4 SCC 334]** (hereinafter referred as White Washer's case), the applicant contended that the direction to recover excess payment is bad in law and sought for quashing Annexures A8 and A9 orders.



4. The 4th respondent/DEO filed reply/counter statement contending that the applicant was not eligible for Leave Without Allowance for the period of 288 days from 15.06.2004 to 29.03.2005 for want of completion of the prescribed years of service as per Rule 91/88, Part I, KSR. It is accordingly that the applicant's representation was rejected vide Annexure-A5 order dated 18.12.2007. Sanctioning increment to the applicant (respondent herein) by Annexure-A6 G.O. was erroneous as indicated in the audit report of the 3rd respondent/DDE. The benefit of Annexure-A6 order is applicable only to those incumbents, who were granted LWA under Rule 91/88 of Part I KSR. However, the applicant was granted LWA under Appendix XII B Part I, KSR, wherefore, Annexure-A6 order does not apply in the case of the petitioner. On such premise, the 4th respondent sought for dismissal of the O.A.

5. The Tribunal, by the impugned order, found the stand of the respondent, insofar as it pertains to the applicant's entitlement to the benefit of Annexure-A6 order,



as correct and legally tenable. However, insofar as the recovery of the excess payment contemplated in Annexure-A9, the Tribunal relied upon the **White Washer's case** and found that the applicant's case would fall under clause (i) and (v) of the situations summarised by the Honourable Supreme Court in paragraph No.18 of that judgment. Accordingly, the Tribunal held that no recovery of the excess amount paid to the applicant can be made.

6. Heard Sri.Saiji Jacob Palatty, learned Senior Government Pleader on behalf of the petitioners and Smt.Thulasi K.Raj on behalf of the respondent. Peruse the records.

7. There is no serious controversy before us as regards the entitlement of the respondent/applicant to the benefit of Annexure-A6 Government Order in the matter of increment granted to the applicant. The thrust of the contentions, as argued by the learned counsel appearing for the respective parties, was on the entitlement of the employer/ Government to recover the excess amount paid, to



which the applicant/ respondent was admittedly not entitled to.

8. Sri.Saiji Jacob Palatty, learned Senior Government Pleader submitted that the rigour of the **White Washer's case** has been diluted substantially by the subsequent judgment of the Honourable Supreme Court in **High Court of Punjab and Haryana and Others v. Jagdev Singh [(2016) 14 SCC 267]**, wherefore, the Tribunal seriously erred in placing reliance upon the **White Washer's case** to grant relief to the respondent/applicant. Per contra, it was submitted by Smt.Tulasi K.Raj on behalf of the respondent that in **Jagdev Singh (supra)**, the Honourable Supreme Court only distinguished clause (ii) of the situation summarised in **White Washer's case** based on the fact that a Judicial Officer, who received payment, which was later found to be in excess, was clearly put to notice that excess payment, if any, would have to be refunded. It is in that factual matrix, that too in respect of clause (ii) alone, that the Honourable Supreme Court deviated from the point no.(ii)



summarised in **White Washer's case in Jagdev Singh (supra)**.

9. Having heard the learned counsel appearing on both sides, we find considerable force in the submission made by the learned counsel for the respondent. As a matter of fact, the legal position emanating from the **White Washer's case** followed by **Jagdev Singh (supra)** is no more res integra. In **State of Kerala and Others v. Vinod Kumar C.R [2020 (4) KLT 230]**, a Division Bench of this Court considered the impact of **Jagdev Singh (supra)** on the dictum laid down in **White Washer's case** and held as follows:

"7.On a reading of both Rafiq Masih and Jagdev Singh, it is difficult for us to accept the contention of the learned Government Pleader that Jagdev Singh is a complete departure from the principles laid down in Rafiq Masih. From a reading of paragraphs 10 and 11 of Jagdev Singh, it appears to us that the Supreme Court had only clarified that in the case of recovery from retired employees or employees who are due to retire within one year of the order of recovery, there would be no bar in ordering recovery, if the employee concerned had executed an undertaking agreeing to refund any excess payment. We cannot read Jagdev Singh as having laid down the proposition that in every case where there is an undertaking as aforesaid, recovery can be ordered from the employee concerned whatever be the point of time that such payment was made. We cannot overlook the fact that there is not even a suggestion in Jagdev Singh that in the event of there being an undertaking to refund excess pay, none of the situations envisaged as items (i) to (v) of Rafiq Masih can be pressed into service."



10. Again, another Division Bench in **State of Kerala and Others v. Sreedevi T.R. [ILR 2019 (4) Ker. 791]** held thus:

“8. We are in agreement with the finding of the Tribunal that the decision in Jagdev Singh's case was rendered on the particular facts of that case and cannot be relied on for the purpose of denying the benefit of the propositions Nos.(iii) and (v) in Rafiq Masih's case to the applicant. We also notice that there the refund was ordered within three years while here there was a delay of 12 years in detecting the mistake itself.”

11. Again, another Division Bench judgment offered by one among us (Alexander Thomas, J.), in **State of Kerala and Others v. P.V.Priya [2021 KHC 473]** considered in detail, the argument based on **Jagdev Singh's case (supra)** to uproot the dictum laid down in **White Washer's case**. The findings in **Vinod Kumar's case (supra)** was quoted with approval and the Division Bench held in paragraph 16, held as follows:

“16. It can thus be seen that the Apex Court in Jagdev Singh's case (supra) has not interfered with the directions contained in para No.18 of the judgment in White Washer's case (supra) regarding clauses (i), (iii), (iv) & (v). The sole modification made in the Jagdev Singh's case (supra) was in relation to clause (ii) of the directions issued in paragraph No.18 of White Washer's case (supra).”

12. Moreover, all the above judgments of the Division Bench referred to another authoritative pronouncement of a



three Judges Bench of the Honourable Supreme Court in **Syed Abdul Qadir and Others v. State of Bihar and Others [(2009) 3 SCC 475]**. Paragraph No.59 of the said judgment is worth extracting:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. The learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made. "

13. We reiterate that the respondent/applicant had absolutely no knowledge that the amount that was being paid to her, was more than what she was entitled to, wherefore, she has no role, whatsoever, in drawing the increment. It was the petitioners/authorities, who erroneously granted increment in terms of Annexure-A6 Government Order, quite carelessly and negligently, for



which the respondent/ applicant cannot be faulted at all. Moreover, Annexure-A9 order directing recovery was issued on 08.03.2016, which is after a period of more than five years from 28.04.2010, the date of Annexure-A6 order, based upon which the applicant's salary was refixed counting the increment. At any rate, as found by the Tribunal, the case of the respondent/applicant would fall within the ambit of clause (v) of the situations summarised in paragraph 18 in the **White Washer's case**. We find no reason to interfere with the Order of the Tribunal.

We may, however, clarify that the petitioners will be at liberty in law to refix the salary of the respondent/applicant after doing away with the mistake prospectively, that is to say with effect from 08.03.2016, the date of Annexure-A9 order. The petitioners will also be at liberty to recover the excess amount, if any, paid with effect from the said date of Annexure-A9, inasmuch as the respondent/applicant had due notice of the fact that the salary being drawn by her is an excess of what is legitimately due to her.



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With the above findings and observations, this O.P(KAT) will stand disposed of.

Sd/-
ALEXANDER THOMAS, JUDGE

Sd/-
C.JAYACHANDRAN, JUDGE

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APPENDIX OF OP(KAT) 95/2023

PETITIONERS' ANNEXURES:

- ANNEXURE A1 TRUE COPY OF THE ORDER DATED 02.01.2004.
- ANNEXURE A2 TRUE COPY OF THE RELEVANT PART OF THE LEAVE APPLICATION DATED 08.06.2004.
- ANNEXURE A3 TRUE COPY OF G.O.(RT.) NO.4050/04/G.EDN DATED 17.09.2004.
- ANNEXURE A4 TRUE COPY OF THE JUDGMENT DATED 07.03.2007 IN W.P.(C) NO.7553/2007.
- ANNEXURE A5 TRUE COPY OF THE G.O. (RT.) NO.5675/07 DATED 18.12.2007.
- ANNEXURE A6 TRUE COPY OF G.O.(MS.) NO.69/2010/ G.EDN. DATED 28.04.2010.
- ANNEXURE A7 TRUE COPY OF THE REPRESENTATION DATED 16.02.2015 SUBMITTED BY THE APPLICANT BEFORE THE 1 ST RESPONDENT.
- ANNEXURE A8 TRUE COPY OF THE LETTER DATED 17.12.2015.
- ANNEXURE A9 TRUE COPY OF THE RELEVANT PART OF THE PROCEEDINGS DATED 08.03.2016.
- EXHIBIT P1 TRUE COPY OF THE ORIGINAL APPLICATION NO. 874/2016.
- EXHIBIT P2 A TRUE COPY OF THE REPLY STATEMENT FILED ON BEHALF OF THE 4TH RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF THE ORDER DATED 07.11.2017 IN O.A. NO.874/2016.
- EXHIBIT P4 A TRUE COPY OF THE UNDERTAKING DATED 13.1.2012.
- EXHIBIT P5 A TRUE COPY OF THE DECLARATION DATED 02.03.2012.
- EXHIBIT P6 A TRUE COPY OF THE UNDERTAKING DATED 03.07.2020.