

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 20.04.2018****CORAM****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****W.P.No.50179 of 2006**

K.Kasinathan

... Petitioner

Vs.

1.The Accountant General (A&E)
Tamil Nadu
Chennai 600 018.

2.The Deputy Director of
Health Services
Nagapattinam.

3.The Block Medical Officer
Primary Health Centre,
Tiruvengadu,
Nagapattinam District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 1st respondent in No.Pr.AG (A&E) / pen8 / Unit II/K147/1740 Rt/ADK/191, dated .3.2004 and quash the same and further direct the respondents to pay retirement benefits to the petitioner in the post of Health Inspector (Special Grade).

For Petitioner : Mr.V.Chandrasekaran

For Respondents : Mr.T.Ravikumar for R1
Mr.K.Ravikumar for R2 and R3
Additional Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records relating to the order passed by the first respondent in No.Pr.AG (A&E)/pen8/Unit II/K147/1740 Rt/ADK/191, dated Nil.3.2004 and to quash the same and further direct the respondents to pay retirement benefits to the petitioner in the post of Health Inspector (Special Grade).

2.The case of the petitioner is that he was appointed as vaccinator in the Health Department on temporary basis and joined duty with effect from 13.07.1964 and his services was confirmed with effect from 02.10.1970. After serving in various positions, the petitioner retired from service on 31.03.2003. The petitioner's pension proposal was sent to the first respondent in time and the first respondent returned the pension proposal with an endorsement that the petitioner was not given special grade benefits in the post of Health Supervisor and also directed for necessary action.

3.However, the second respondent retransmitted the pension proposal to the first respondent by justifying the earlier proposal. Hence, the first respondent once again returned the pension proposal with the specific endorsement that the petitioner is entitled for the special grade service benefits in the post of Health Supervisor. Accordingly, the first respondent directed fixation of pay in the time scale of Rs.5,900 – 200 – 9900 which is attached to the post of special grade Health Supervisor. Thereafter, the second respondent realized his mistake and passed an order in R.No.795/2003/A2 dated 30.09.2003 granting him special grade service benefits in the post of Health Supervisor with effect from 19.01.1999 and once again the petitioner's pension proposal was forwarded to the first respondent.

4.The petitioner's pension proposal was once again returned by the first respondent stating that as per G.O.Ms.No.1771, dated 13.09.1998, the regularization of the services of vaccinator prior to 01.01.1975 were rectified by the Government and they are eligible to have their pay fixed in the time scale of pay with effect from 01.01.1975 and they are eligible only for consolidated pay prior to 01.01.1975. The first respondent vide the impugned order has directed that over paid pay and allowances may be calculated as per the intimation of the Director of Public Health and Preventive Medicines

and indicated in the proposal to withhold the same and further directed to revise the pay and excess payment to be calculated and intimated for recovery. Challenging the same, the petitioner has filed this writ petition.

5.The learned counsel appearing for the petitioner would submit that the case of the petitioner is squarely covered by the decision of the Hon'ble Apex Court reported in **(2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)**, the relevant portion of which reads as follows:

"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 employer's right to recover.

19. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery),

shall be deemed to have been upheld, for the reasons recorded above."

6.The learned counsel appearing for the first respondent though concedes that the petitioner's case is petitioner is squarely covered by the decision of the Hon'ble Apex Court reported in **(2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)** in respect of fixation of correct pay, submits that the Government has the power to re-fix the pay if any irregular fixation was awarded in favour of the petitioner. After due process of law, the Government has the power to pass orders in this aspect.

7.In view of the above, I am inclined to extend the benefits as ordered by the Hon'ble Apex Court in the decision reported in **(2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)**. However, this order will not stand in the way of the Government to pass orders after affording opportunity to the petitioner for revision of pay in respect of irregular fixation of pay to be rectified, if any, as per law.

8.The writ petition is allowed with the above observations. No costs. Consequently, the connected miscellaneous petition, if any, is also closed.

20.04.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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M.DHANDAPANI,J.
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