

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 12.06.2018****CORAM****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****W.P.No.12985 of 2006**

S.P.Natesan

... Petitioner

Vs.

1.The Director of Public Health and
Preventive Medicine,
Chennai – 600 006.

2.The Branch Officer,
The Accountant – General (A. & E.)
Tamil Nadu,
Chennai – 600 018.

... 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 orders in 1) Letter No.P26/I/N 101 – 97-3 – 05 – 06/Ack/295 dated 12.01.2006 of the second respondent and (2) R.No.82259/TRG – 1/2005/S3 dated 06.02.2006 of the first respondent, quash the same and issue consequential directions to the respondents to disburse the pensionary benefits due and payable to the petitioner on his retirement on 31.05.2003, by taking into account the pay fixed earlier in the post of Non-Medical Supervisor as on 01.10.1988 on 12.12.1988 and again refixed on 25.03.1992 and increments sanctioned and the pay fixed in the next promoted post of Health Educator and to grant 18% interest for the delayed payment.

For Petitioner : Mr.Ali Hasan Khan
for M/s.M.Ravi

For Respondents : Mr.K.Ravikumar for R1
Additional Government Pleader
Mr.V.Vijay Shankar for R2

ORDER

The petitioner has filed this writ petition challenging the letter of the second respondent dated 12.01.2006, through which, the service register of the petitioner was returned to the first respondent, directing the department to make revised pay fixation and the communication of the first respondent dated 12.01.2006 to the Deputy Director of Medical Services (TB), Dharmapuri, wherein, the Deputy Director of Medical Services (TB), Dharmapuri, was requested to make necessary entries in the service register of the petitioner for revised pay fixation excluding 5% PP in the post of Non Medical Supervisor.

सत्यमेव जयते

2.It is the case of the petitioner that he entered the service as Para Medical Worker on 24.10.1970 in the Public Health Department and retired from service on 31.05.2003 on attaining the age of superannuation as Health Educator. The petitioner's grievance is that his pensionary benefits have not yet been sanctioned and the second respondent has returned the pension proposals vide letter dated

12.01.2006 to the first respondent and in turn the first respondent has forwarded the same, to the Director of Medical Services (TB), Dharmapuri and requested him to make necessary entries in the service register for the revised pay fixation excluding 5% PP in the post of Non Medical Supervisor and forward the service register with due alteration along with the required proposals for revision of pension. Hence, the petitioner has come forward with this writ petition.

3.The learned counsel appearing for the petitioner would submit that after completion of 10 years of service in the post of Para Medical Worker/ Leprosy Inspector, the petitioner was appointed as Selection grade Leprosy Inspector with effect from 24.10.1980 vide proceedings of the District Medical Officer, Salem dated 28.06.1982 and was promoted as Non – Medical Supervisor with effect from 03.08.1988. After the petitioner's retirement, without hearing the petitioner, the first respondent, as per the direction of the second respondent, has requested the Director of Medical Services (TB), Dharmapuri to make necessary entries in the service register for the revised pay fixation excluding 5% PP in the post of Non Medical Supervisor and to forward

the service register with due alteration along with the required proposals for revision of pension. The said action is prohibited by the decision of the Honourable Apex Court, reported in **(2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others.**

4.The learned Additional Government Pleader appearing for the first respondent would state that the respondent has the power to revise the pension proposal if the employer has wrongly fixed the employee's pay without considering the relevant Rules at the relevant point of time. Accordingly, after the retirement of the petitioner, the first respondent has requested the Director of Medical Services (TB), Dharmapuri, to make necessary entries in the service register of the petitioner for the revised pay fixation excluding 5% PP in the post of Non Medical Supervisor.

5.The learned counsel appearing for the second respondent would state that there was erroneous pay fixation on two counts in the case of the petitioner. Accordingly, the second respondent has directed the first respondent to make revised pay fixation.

6.Heard the arguments advanced on either side.

7.As per the decision of the Honourable Apex Court, reported in **(2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)**, recovery could not be made, if the pay is wrongly fixed by the department without the fault of the employee. In the present case, the second respondent has directed the first respondent to send revised pay proposal for refixation of pension as required under law. However, no order could be passed behind the back of the petitioner.

8.Perusal of the impugned letter and communication also reflects that no notice has been sent to the petitioner calling for his explanation.

9.In view of the above facts and the decision cited supra, this Court is of the opinion that the petitioner is entitled to submit his explanation to the first respondent and after hearing the petitioner, the first respondent may re-fix the pension without ordering any recovery. Accordingly, the petitioner is at liberty to submit his explanation to the first respondent and the first respondent, after considering his explanation shall pass appropriate orders.

M.DHANDAPANI,J.

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10.The writ petition is disposed of with the above observations.

No costs.

12.06.2018

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Speaking Order/ Non Speaking Order

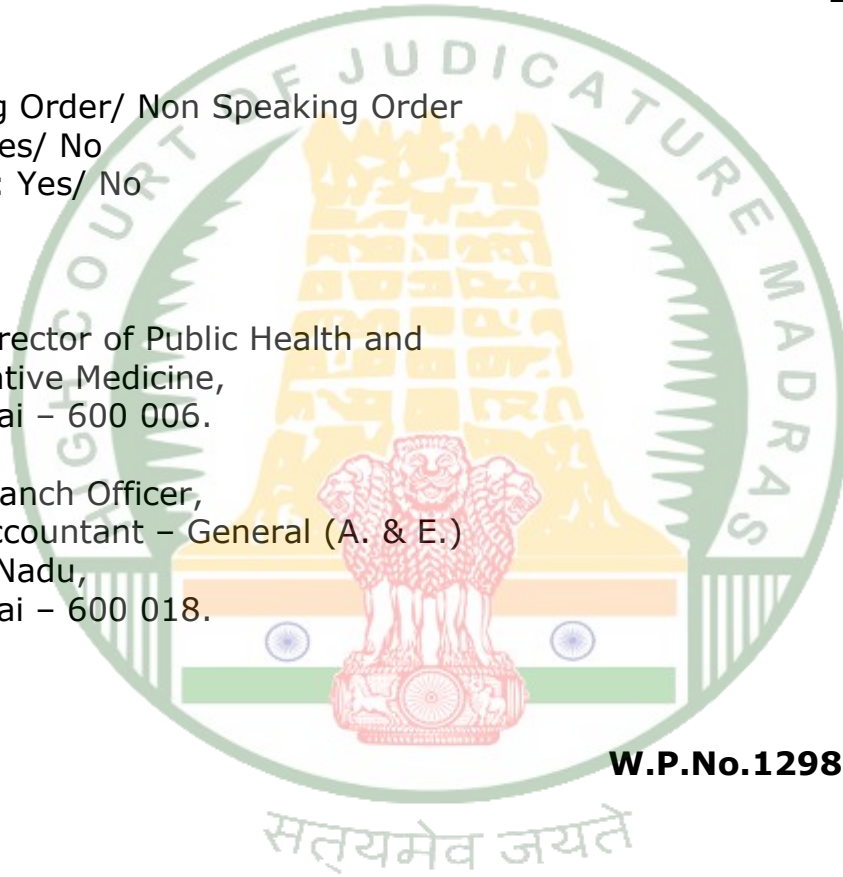
Index: Yes/ No

Internet: Yes/ No

To

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