



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P. (MD) No.7339 of 2011

and

M.P. (MD) No.1 of 2011

V.Akkini Ganesan

... Petitioner

Vs.

1. The Government of Tamil Nadu,  
represented by its Secretary,  
Health Department,  
Chennai - 9.

2. The Director,  
Public Health and Preventive Medicine,  
DMS Campus,  
Thenampet,  
Chennai - 6.

3. The Deputy Director of  
Health Service,  
Madurai - 14.

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the Impugned Order of recovery in Na.Ka.No.2482/Aa5/08 dated .12.2010 on the file of the Respondent No.3 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.R.Sethuraman  
Special Government Pleader

### **O R D E R**

The order of recovery issued by the third respondent in December 2010 is under challenge in this writ petition.

2.The learned counsel for the writ petitioners states that the  
<https://hcservices.ecourts.gov.in/hcservices/>  
the writ petitioner was working as para medical worker and an  
order of recovery was issued in respect of excess payment.



3. The learned counsel for the writ petitioner states that the pay and revision of pay was granted by the respondents based on the Government Orders in force. The writ petitioner has not made any misrepresentation in respect of the fixation of pay. Therefore, the excess amount even if disbursed cannot be recovered from the salary of the writ petitioner.

4. The learned Special Government Pleader appearing on behalf of the respondents states that the pay of the writ petitioner was erroneously fixed and the same was found during the audit objection. Thus, the order of recovery was issued to recover the excess payment already made in favour of the writ petitioner. The learned Special Government Pleader is of an opinion that there is no error in recovering the excess payment. However, it is not made clear that notice and opportunities were provided to the writ petitioner before issuing the impugned order of recovery.

5. This Court is of an opinion that the authorities competent are empowered to correct the mistake in respect of the fixation of pay in accordance with the Government Orders and the pay rules in force. However, the excess amount if any paid cannot be recovered after the retirement of the employees. In the present writ petition, no show cause notice was issued before issuing the impugned order of recovery. Thus, the impugned order is in violation of the principles of natural justice. This apart, the writ petitioner was working as group IV employee and the recovery of excess amount cannot be done from the group IV employees and retired employees. The legal principles are settled by the Hon'ble Supreme Court of India in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in (2015) 4 **Supreme Court Cases 334** settled by the principles in paragraph 18, which is extracted here under:

*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 the 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.

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

6. In view of the legal principles settled by the Hon'ble Apex Court, this Court is of an opinion that the recovery of the excess amount cannot be made from the pension of the writ petitioner. However, it is made clear that the errors if any in the fixation of pension and re-fixation, the same shall be corrected by the competent authorities.

7. In this view of the matter, the impugned order passed by the third respondent in Na.Ka.No.2482/Aa5/08 dated .12.2010 is quashed. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary, Government of Tamil Nadu,  
Health Department, Chennai - 9.
2. The Director,  
Public Health and Preventive Medicine,  
DMS Campus, Thenampet, Chennai - 6.
3. The Deputy Director of  
Health Service, Madurai - 14.

+ 1 cc TO Mr.T.Lajapathi Roy , Advocate in SR No. 54957  
+ 1 cc TO The Special Government Pleader in SR No. 55102

mm

AE/SV MMS/SAR3/17.04.2018/3P/6C

W.P. (MD) No.7339 of 2011  
13.03.2018