

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.23591 of 2004
and
WP.MP.No.28564 of 2004

P.Rajapandiammal

...Petitioner

Vs

1. The Government of Tamil Nadu
Rep. by the Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai - 600009.
2. The Director of Medical and
Rural Health Services,
Chennai- 600006.
3. The Joint Director of Medical and
Rural Health and Family Welfare,
Virudunagar, Virudunagar District.
4. The Senior Civil Surgeon and
Medical Officer,
Government Hospital, Aruppukottai,
Virudunagar District. ...Respondents

PRAYER: Writ 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 order of the 3rd respondent in Na.Ka.No.9730/Ni-3/03 dated 17.05.2004 and the order of the 4th respondent in No.4289/A/03 dated 29.06.2004 and quash the same and direct the respondents 2 to 4 to restore the pay fixation as existed before the issue of impugned order and grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Rajendran

For Respondents: Mr.S.Suresh Kumar, GA

O R D E R

Citing audit objections, the 3rd respondent herein had cancelled the grant of Selection Grade pay scale to the petitioner and had re-fixed the scale with effect from 04.01.1998 through the impugned orders dated 17.05.2004 and 29.06.2004. Pursuant to the impugned orders, the respondents have also informed the petitioner that the excess payment would be recovered from the petitioner's salary.

2. The learned counsel for the petitioner submitted that prior to the re-fixation and deductions ordered, no notice was given to the petitioner and as such, the order itself is in violation of the principles of natural justice.

3. It is seen that the petitioner belongs to Grade-C Government employee. The Hon'ble Apex Court in its decision reported in 2015 (4) SCC 334 in the case of State of Punjab and others vs Rafiq Masih (White Washter) and others, has held that recovery of excess payments from the employees belonging to Grade-C and Grade-D services, is impermissible in law. In the said decision, the Hon'ble Apex Court has also held that recovery from the employees, when the excess payment has been made for a period in excess of 5 years before the order of recovery is issued, is also impermissible. In the instant case, the recovery is sought to be made from 04.01.1998, which is apparently more than 5 years and opposed to the decision of the Hon'ble Apex Court cited above. Even otherwise, the recovery without affording an opportunity to the petitioner by way of prior notice, is also bad in law.

4. For all the foregoing reasons, the impugned orders of the 3rd respondent in Na.Ka.No.9730/Ni-3/03 dated 17.05.2004 and the 4th respondent in No.4289/A/03 dated 29.06.2004, are quashed. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

hvk

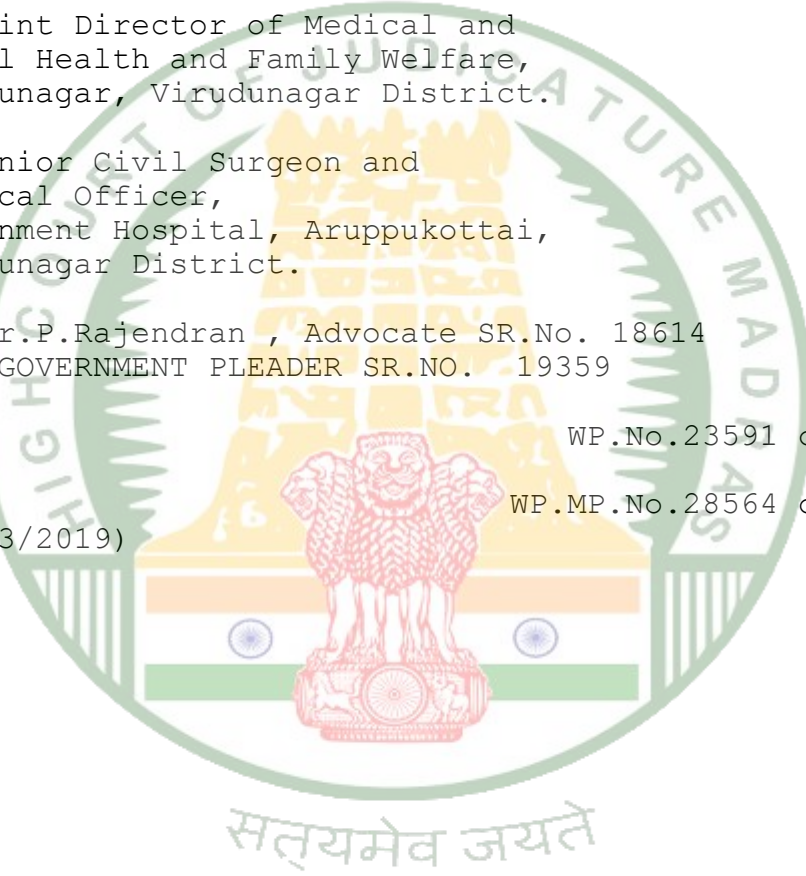
To

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai - 600009.
2. The Director of Medical and
Rural Health Services,
Chennai - 600006.
3. The Joint Director of Medical and
Rural Health and Family Welfare,
Virudunagar, Virudunagar District.
4. The Senior Civil Surgeon and
Medical Officer,
Government Hospital, Aruppukottai,
Virudunagar District.

+1cc to Mr.P.Rajendran , Advocate SR.No. 18614
+1 CC TO GOVERNMENT PLEADER SR.NO. 19359

WP.No.23591 of 2004
and
WP.MP.No.28564 of 2004

A.SK(29/03/2019)



WEB COPY