

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34198 of 2005
and
W.P.M.P.No.37090 of 2005

R. Dhanagopalan ..Petitioner

vs

1. The Deputy Director of
Health Services, Villupuram.

2. Medical Officer,
Primary Health Centre,
Siruvanthadu,
Villupuram.

3. The Director of Public Health
and Preventive Medicines,
Chennai-6

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a writ of certiorari, or
any other appropriate writ, order or direction in the nature of
a writ, calling for the records, relating to the order passed by
the 1st respondent in R.No.1603/A3/05. dt.15.9.2005.

For Petitioner : Mr. Mr. V. Chandrasekaran

For Respondents: Ms. R. Janaki, Additional Government Pleader

O R D E R

The order passed by the first respondent in
R.No.1603/A3/05 dated 15.09.2005 is sought to be quashed in the
present Writ Petition. The impugned order relates to certain
irregularities to the notice in sanctioning the Junior -Senior
anomaly and the revision of pay granted to the writ petitioner.
Based on the representation submitted by the writ petitioner
claiming scale of pay on par with his junior, the Deputy
Director of Health Service passed an order and subsequently the
said re-fixation was found not in accordance with the par in

force. Accordingly, it was concluded that stepping up of the pay done to Thiru. R. Dhanagopalan, Health Inspector on par with the Junior Mr.K. Kannabiran, Health inspector by the gross violation of the rules and accordingly the said re-fixation by stepping up of the pay of the writ petitioner was cancelled.

2. This Court is of an opinion that the stepping up of the pay of writ petitioner was done. Based on his representation submitted before the competent authorities, however, subsequently the re-fixation was found to be irregular and accordingly the scale of pay was corrected. Pursuant to the revision of scale of pay, the recovery was also imposed.

3. The learned counsel for the writ petitioner states that the order impugned had been issued after the retirement of the writ petitioner and the writ petitioner was allowed to retire from service on 30.06.2007 and the impugned order was passed on 15.09.2005. Thus, recovery of excess payment after retirement is impermissible.

4. This Court is of an undoubted opinion that errors, mistakes if any, cripted in respect of the scale of pay can be rectified by the Competent Authorities. In other words, there is no impediment for the authorities to correct the scale of pay in accordance with the Government orders and the pay rules in force.

5. However, the recovery is concerned, the same cannot be done after the retirement of the writ petitioner. In view of the principles settled by the Hon'ble Supreme Court of India in the case State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334], the Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgement, which is extracted hereunder:

"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 Class III, 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. Based on the judgment cited supra recovery can be imposed. However, the mistakes if any, can be corrected with reference to the scale of pay to be fixed for the writ petitioner. Accordingly, the following directions are issued .

1. the recovery of excess payment with reference to the impugned order passed by the first respondent in proceedings R.No.1603/A3/05 alone is quashed.

2. The respondents are at liberty to correct the scale of pay of the writ petitioner based on the Government orders and the pay Rules in force.

3. If any amount is already recovered pursuant to the impugned order of recovery, the same shall be reimposed to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

7. Accordingly, Writ Petition stands allowed partly. No costs. Consequently, Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

mrn/kmm

To

1. The Deputy Director of
Health Services, Villupuram.

2. Medical Officer,
Primary Health Centre,
Siruvanthadu,
Villupuram.

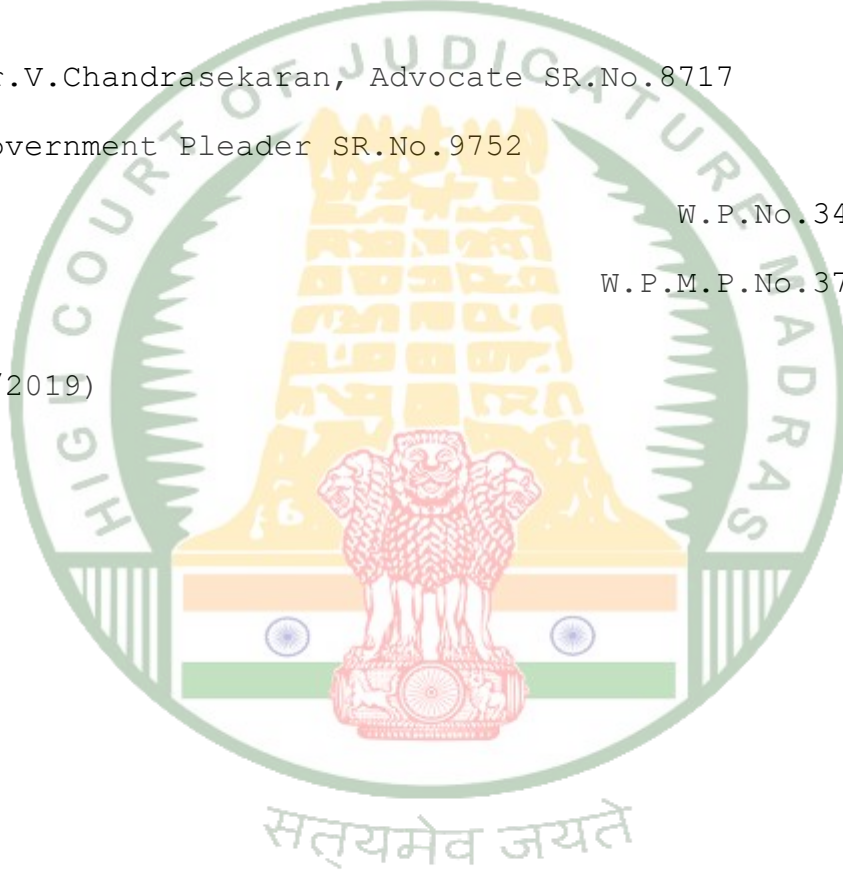
3. The Director of Public Health
and Preventive Medicines,
Chennai-6

+1cc to Mr.V.Chandrasekaran, Advocate SR.No.8717

+1cc to Government Pleader SR.No.9752

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NMI (CO)
GMY (05/03/2019)



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