



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) Nos.21082 and 21084 of 2019

and

W.M.P. (MD)Nos.17713 to 17716, 17719 to 17721 and 17724 of 2019

A.Anis Fathima ... Petitioner in W.P. (MD)No.21082 of 2019
K.Radhalakshmi ... Petitioner in W.P. (MD)No.21084 of 2019

-Vs-

1.The State Government of Tamil Nadu,
Represented by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 006.

2.The Additional Chief Secretary to Government,
Finance Department,
Secretariat, Fort St. George,
Chennai-600 006.

3.The Director,
Directorate of Medical Education,
Kilpauk, Chennai-600 010.

4.The Joint Director,
Medical and Rural Health Services and
Family Welfare,
Virudhunagar, Virudhunagar District.

5.The Chief Civil Surgeon,
Medical Officer,
Government Hospital,
Pandalkudi Road,
Aruppukkottai, Virudhunagar District.

... Respondents

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned proceedings in Letter No.4738/AB1/2019-2, dated 03.06.2019, issued by the first respondent and the consequential impugned circular dated 27.06.2019, in Na.Ka.No.82155/Ni2/5/2017, issued by the third respondent and consequential impugned notice dated 16.09.2019 in Na.Ka.No.2335/Nil-2018 & Na.Ka.No.2336/Nil-2018 respectively issued by the 5th respondent only served on the petitioners on 16.09.2019 and quash the same.



For Petitioner : Mr.S.Rajesh Kanna
(in both Writ Petitions)
For Respondents : Mr.V.R.Shanmuganathan,
Special Government Pleader.
(in both Writ Petitions)

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COMMON ORDER

These Writ Petitions are filed to quash the order of the first respondent dated 03.06.2019, the order of the third respondent dated 27.06.2019 and the order of the 5th respondent dated 16.09.2019.

2.Since the issues involved in these Writ Petitions are one and the same, these Writ Petitions are heard together and disposed of by way of this common order.

3.Mr.V.R.Shanmuganathan, learned Special Government Pleader takes notice on behalf of the respondents. By consent of both parties, these Writ Petitions are taken up for final disposal at the stage of admission itself.

4.According to the petitioners, they participated in the process of selection, as per the notification issued by the Tamil Nadu Public Service Commission for the post of Typist on 15.11.2007. The petitioners were selected and certificate verification was completed by the Tamil Nadu Public Service Commission on 10.07.2009. The Tamil Nadu Public Service Commission issued appointment order and the Director of Medical Education, Chennai, issued posting orders to the petitioners. The petitioners are discharging their duties without any blemish for the past years. The petitioners are continuing their services as Typist Grade-III. The Government decided to revise the scale of pay of new recruits and appointed One Man Committee. The said committee has recommended the Government to extend the benefits to its new recruits appointed between 01.01.2006 and 31.05.2009. The said recommendations were accepted by the Government and the Government refixed the pay of Junior Assistants / Agricultural Officers and any other similar categories, selected prior to 01.06.2009 and appointed after 01.06.2009. The said benefits were not extended to the petitioners and the petitioners made request to extend the benefit of G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010. The third respondent sought for clarification from the Tamil Nadu Public Service Commission, by the letter, dated 18.07.2018 and the Tamil Nadu Public Service Commission, by its letter dated 26.10.2018, clarified that the date of appointment of the petitioners, should be taken as 07.11.2008. Based on the said clarification, the third respondent refixed the scale of pay of the petitioners and the revised scale of pay was paid to the petitioners. However, the first respondent, by letter dated 03.06.2019, had withdrawn the said benefits given to the



petitioners under the proceedings dated 20.12.2018, on the ground that the third respondent extended the said benefit to the petitioners and similarly placed persons without getting prior concurrence from the Finance Department.

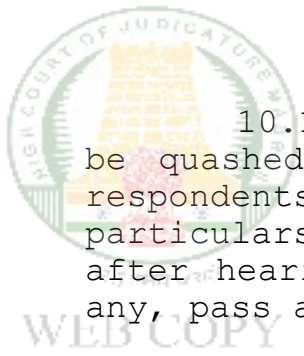
5.The similarly placed persons have filed Writ Petition in W.P.(MD)No.15194 of 2019, challenging the order of the first respondent dated 03.06.2019. This Court, by order dated 07.08.2019, dismissed the Writ Petition as premature, with liberty to the similarly placed persons to approach the Court, if an order of recovery is passed. Thereafter, the third respondent, by proceedings dated 27.06.2019, instructed the fourth respondent to recover the excess amount paid to the petitioners and the 5th respondent, by order dated 16.09.2019, circulated the said order to the petitioners, which are impugned in these Writ Petitions.

6.The learned counsel appearing on behalf of the petitioners contended that the respondents, without issuing any notice, are seeking to recover the alleged excess amount paid to the petitioners. The fourth respondent has refixed the scale of pay based on the clarification issued by the Tamil Nadu Public Service Commission and revised the scale of pay, which is in order. The prior concurrence from the Finance Department, is an internal and routine process, for which, the petitioners should not be penalized and prayed for allowing the writ petitions.

7.The learned Special Government Pleader appearing on behalf of the respondents submitted that the Government Order in G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2019, is not applicable to the petitioners. The same is applicable only to the employees, who are appointed on or before 31.05.2009 and the petitioners are appointed only on 02.06.2009 and the scale of pay was revised without getting concurrence from the Finance Department, which is mandatory and recovery now sought to be made is valid and prayed for dismissal of the Writ Petitions.

8.The petitioners sought extension of benefit of G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010, to them also. The same benefit was extended to them after getting clarification from the Tamil Nadu Public Service Commission and by the impugned order dated 27.06.2019, the third respondent is seeking to recover certain amount alleged to have been paid in excess to the petitioners.

9.From the impugned order, it is seen that no notice was issued to the petitioners and the alleged excess amount was not mentioned in the impugned order. Further, it is stated that if any excess amount is paid, it is to be recovered. Therefore, the impugned order dated 27.06.2019, is vague and issued without notice to the petitioners.



10. For the above reasons, the impugned orders are liable to be quashed and are hereby quashed. However, it is open to the respondents to issue notice to the petitioners, furnishing the particulars of excess amount alleged to have been paid to them and after hearing the petitioners and considering their objections, if any, pass appropriate orders on merits and in accordance with law.

11. In the result, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Secretary to Government,
State Government of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 006.
2. The Additional Chief Secretary to Government,
Finance Department,
Secretariat, Fort St. George,
Chennai-600 006.
3. The Director,
Directorate of Medical Education,
Kilpauk, Chennai-600 010.
4. The Joint Director,
Medical and Rural Health Services and
Family Welfare,
Virudhunagar, Virudhunagar District.
5. The Chief Civil Surgeon,
Medical Officer,
Government Hospital,
Pandalkudi Road,
Aruppukkottai, Virudhunagar District.

+2 CC to Mr.S. RAJESH KANNAN, Advocate (SR-90739[F] dated 01/10/2019)

+1 CC to SPL GP (SR-91184[F] dated 03/10/2019)

W.P. (MD) Nos.21082 and 21084 of 2019

01.10.2019

Myr

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