



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2021

CORAM:

THE HONOURABLE DR JUSTICE ANITA SUMANTH

W.P. (MD) No.19618 of 2018

and W.M.P (MD) Nos.17406 and 17407 of 2018

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X.Shanthi

... Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. by its Principal Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai - 620 009.

2.The Director of Public Health
and Preventive Medicine,
DMS Complex,
No.359, Anna Salai,
Chennai - 600 018.

3.The Deputy Director of Health Services,
Collectorate Complex,
Virudhunagar.

4.The Block Medical Officer,
Government Primary Health Centre,
Narikudi,
Virudhunagar District.

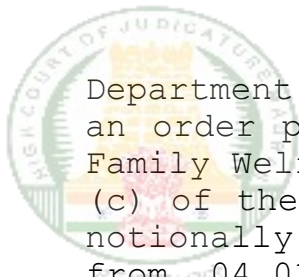
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records pertaining tot he impugned order passed by the first respondent in G.O.(Ms.)No.5, Health and Family Welfare (L1), Department, dated 04.01.2017 insofar as Clause 3(c) of the GO granting pay benefits to the petitioner notionally from the date of the G.O. Is concerned, and the consequential proceedings issued by the third respondent in Na.Ka.No.3876/A2/2012, dated 17.02.2017 and the fourth respondent in Na.Ka.No.1207/A1/2017 dated 14.06.2017, quash the same and direct the respondents to refund Rs.5,48.101/- received from the petitioner and conseqeuntly revise the petitioner's pensionary benefits.

For Petitioner : Mr.M.Sankaralingam
for Mr.R.Subramanian

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

O R D E R



Department of Public Health and Preventive Medicine. She challenges an order passed by the first respondent in G.O.Ms.No.5, Health and Family Welfare(L3) Department, dated 04.01.2017 specifically clause 3 (c) of the Government Order granting pay benefits to the petitioner notionally from the date of the Government Order i.e only with effect from 04.01.2017.

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2. As a consequence of the above order, the third respondent has sought to recover the payments effected to her from date of appointment, by his order dated 17.02.2017 and the fourth respondent on 14.06.2017 has recovered the same. Both the aforesaid proceedings are challenged as well.

3. The petitioner has admittedly been appointed on 26.02.1990 beyond the permissible age of 40 years as per Rule 5 (a) of the Tamilnadu Public Health Subordinate Service Rules (Rules). Despite the age breach not having been relaxed, the third respondent has proceeded to regularize her appointment on 10.12.2003. She thus has been employed in the status of a regular employee with effect from 16.07.2002.

4. The impugned proceedings that seek to recover the salary paid to her on the ground that her appointment is contra to Rule 5 (a) of the Rules and that relaxation has not been obtained for the appointment cannot be attributed to the failure on the part of the petitioner. The fact that she has been appointed on regular basis and has been continuing to work since 2003 in that capacity, will militate against the impugned orders, including that of recovery.

5. I am given to understand that pending writ petition, as no interim protection was obtained, recovery has been effected as per the impugned orders.

6. On the basis of the discussion as above, the impugned orders are quashed and the fourth respondent is directed to refund the amounts recovered from the petitioner within a period of 10 weeks from today. All consequence be granted to the petitioner including reworking and settlement of terminal benefits within the time frame as aforesaid.

7. In the result this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

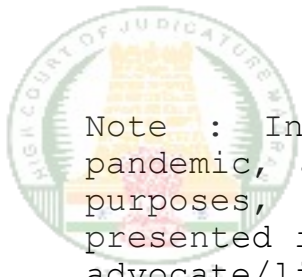
Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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Virudhunagar District.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-39217[F] dated
17/12/2021)

+1 CC to M/s.SPL GP (SR-39284[F] dated 17/12/2021)

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NSN(CO)
SB(29.12.2021) 3P 7C