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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.NO.15173 OF 2021

AND

W.M.P.NO.16068 OF 2021

M.Rajeswari

... Petitioner

.Vs.

1. The Secretary to Government,
The Government of Tamil Nadu,
Public Health and Family Welfare Department,
Fort St. George, Chennai.

2. The Director,
The Public Health and Family
Welfare Department,
DMS Compound, Teynampet,
Chennai.

3. The Deputy Director,
Public Health and Family
Welfare Department,
Thiruvarur District.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 3rd respondent in connection with his proceedings in Na.Ka.No.2143/2021/A1 dated 16.04.2021 and quash the same and consequently, direct the respondent to regularize the petitioner w.e.f. 18.08.2001, when she was initially appointed and grant all consequential benefits.

For Petitioner : Mrs.T.Aananthi

For Respondents : Mr.V.Jeevagiridharan,
Additional Government Pleader
For R1 to R3



By consent, this Writ Petition is taken up for final disposal.

(ii) In Letter R.No.18112/PHC.7/A3/2021 dated 23.03.2021 of the Director of Public Health and Preventive Medicine, Chennai-6, the Sanitary Workers engaged through Patient Welfare Society under NRHM, should be engaged through the outsourced company and they will be paid salary of Rs.1,000/- p.m. where deliveries are conducted within 10 numbers and Rs.1500 p.m. where deliveries are conducted more than 10 numbers. Further sanitary workers those who have completed 7 years of service shall be paid Rs.1,500/- p.m. irrespective of number of deliveries conducted. Accordingly, instructions were issued to the Block Medical



Officers concerned to dispense with the claiming of Special Time Scale of RCH Sanitary Workers and to continue with existing Consolidated Pay, vide Office R.No.2143/2021/A1 dated 16.04.2021.

(iii) Accordingly orders were issued in G.O.(D) No.792, Health and FW Department dated 05.04.2017 by permitting the Director of Public Health and Preventive Medicine, Chennai to fix the wages of 3140 RCH Sanitary Workers on daily wages, as fixed by the consequent District Collectors under his control. Further, instructed to claim and pay the wages of the 3140 Sanitary Workers from the NHM Funds. The Mission Director, NHM has informed that the proposals sent to the Government has not been approved by the Government of India in ROP 2018-19 and also informed that the State Government may be addressed for Budget Allocation for activity. Further Government Lr.No.14037/AB-1/2019-2 Health and FW Department dated 19.08.2019, it was informed that the above said proposal is still under examination of the Government.

(iv) The contents of G.O.Ms.No.385, Finance Department dated 01.10.2010 were thoroughly examined and reviewed by the Government, vide G.O.Ms.No.792, Health and Family Welfare dated 05.04.2017 and ordered that Sanitary Workers engaged under RCH Scheme and paid consolidated pay through Patient Welfare Society are treating as project sub-staff. After thorough review, it was stated in the G.O. that the Sub-staff of RCH Project are not eligible for Special Time Scale of Pay granted in G.O.Ms.No.385. Further, they were engaged subject to the condition that their services will not be regularized and they could not be claimed any other preferential rights for Government Servants.

4. Mrs.T.Ananthi, learned counsel for the petitioner submitted that the impugned order of recovery has been passed without providing any opportunity to the petitioner and the third respondent ought to have gone into the fact that the petitioner was appointed only through Employment Exchange and not through outsourcing and had put in 20 long continuous years of service and therefore, prays for appropriate orders directing the respondent to regularize the services of the petitioner.

5. This Court has considered the submission made by the learned counsel for the petitioner and perused the entire materials placed before it.

6. As far as the impugned order of recovery passed by the third respondent is concerned, the petitioner has not been provided with any opportunity and therefore, the same has been passed in violation of the principles of natural justice. The Hon'ble Supreme Court in State of Punjab v. Rafiq Masih (White Washer and Others) reported in (2015) 4 SCC 334, held as follows:



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"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 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.

Keeping in mind the ratio laid down in the above cited decision, this Court is of the view that the impugned order of recovery as against the petitioner is impermissible and the same is liable to be set aside.

7. As regards the second contention of the petitioner is concerned, the stand taken by the third respondent in para 8 of the counter affidavit that the proposal is under active consideration of the Government and therefore, it is for the Government to consider the request made by the petitioners in the light of the Government Orders.

8. In view of the above, the impugned order of the third respondent in Na.ka.No.2143/2021/A1 dated 16.04.2021 is quashed.



Insofar as revision of wages/ Time Scale of Pay and regularization are concerned, the petitioner shall make a fresh representation to the respondents 1 and 2 within a period of two weeks from the date of receipt of a copy of this order and on such representation being made, the respondents 1 and 2 shall consider the grievance of the petitioner, bearing in mind that the petitioner has continuously served as Sanitary Worker for more than 20 years and pass appropriate orders in accordance with law, within a period of three months thereafter.

9. With the above direction, this Writ Petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Secretary to Government,
The Government of Tamil Nadu,
Public Health and Family Welfare Department,
Fort St. George, Chennai.
2. The Director,
The Public Health and Family
Welfare Department,
DMS Compound, Teynampet,
Chennai.
3. The Deputy Director,
The Public Health and Family
Welfare Department,
Thiruvarur District.

+1cc to Mrs.T.Aananthi, Advocate, S.R.No.8931
+1cc to the Government Pleader, S.R.No.9022

W.P.NO.15173 OF 2021

SSN(CO)
PBS/18/02/2022