



W.P.No.25597 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 16.03.2022**

**CORAM:**

**THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR**

**W.P.No.25597 of 2021**  
**and**  
**W.M.P.No.27017 of 2021**

A.Gomathi

... Petitioner

vs.

1.The Director of Public Health and  
Preventive Medicine,  
No.359, Anna Salai, Teynampet  
D.M.S Campus,  
Chennai – 600 006.

2.The Deputy Director of  
Health Services,  
Collectorate Campus Annexure  
Building,  
Nallipalayam Post,  
Namakkal – 637 003.

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order dated 22.02.2021 made in R.No.11621/A5/2019 and the consequential order dated 22.10.2021 made in Na.Ka.No.11621/a2/2019 passed by the 2<sup>nd</sup> respondent and to quash the same.



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W.P.No.25597 of 2021

For Petitioner : Mr.C.Prabakaran

For Respondents : Mr.V.Manoharan  
Additional Government Pleader

### **ORDER**

This writ petition has been filed for issuance of a Writ of Certiorari to call for the records relating to the impugned order dated 22.02.2021 made in R.No.11621/A5/2019 and the consequential order dated 22.10.2021 made in Na.Ka.No.11621/a2/2019 passed by the 2<sup>nd</sup> respondent and to quash the same.

2. The case of the writ petitioner is that the petitioner was appointed as Record Clerk in the 2nd respondent department and after completion of probation, periodical increments were sanctioned to the petitioner. Subsequently, the 2nd respondent has issued the impugned order dated 22.02.2021 in R.No.11621/A5/2019 revising her scale of pay from 5200-20200 + Grade Pay Rs.1900/- to 4800 - 10000 + grade pay Rs.1400 instead of grade pay Rs.1,900/- and also ordered to recover the excess amount of Rs.2,83,572/-. Therefore, the petitioner sent a communication on 26.04.2021 to the 2nd respondent informing that the family circumstances does not



W.P.No.25597 of 2021

permit her to remit such huge amount and it is not possible for her.

Subsequently, the 2nd respondent passed a consequential impugned order dated 22.10.2021 in Na.Ka.No.11621/A2/2019 attaching the salary of 1/3rd to recover the excess salary of a sum of Rs.2,83,572/- and to remit the same into Government account. Aggrieved over the same, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner submitted that the impugned orders passed by the 2nd respondent is liable to be set aside on the sole ground of violation of principles of natural justice, as no opportunity of hearing was granted to the petitioner.

4. The learned Additional Government Pleader would submit that as contended by the petitioner, if no opportunity was granted, certainly the 2nd respondent will provide an opportunity of hearing to the petitioner and thereafter, pass appropriate orders in accordance with law as per the aforesaid decision of the Hon'ble Supreme Court.

5. The issue with regard to the recovery of amount from Group 'D' service employee has already been considered by the Hon'ble Supreme Court



W.P.No.25597 of 2021

in the case of **State of Punjab and Others Vs. Rafiz Masih (White Washer)**

**and Others** reported in (2015) 4 SCC 334, wherein it has been held as follows:

*"(i) Recovery from employees belonging to Class-III and Class-IV Service (or Group 'C' and Group 'D' service).*

*(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

*(iii) Recovery from 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".*



W.P.No.25597 of 2021

6. On perusal of the impugned order, it is seen that there is no reference that an opportunity of hearing was given to the petitioner.

Therefore, in the light of the aforesaid decision cited supra, the recovery proceedings initiated by the 2nd respondent is not sustainable in law and the same is liable to be quashed.

7. Accordingly, the Writ Petition is allowed and the impugned orders passed by the 2nd respondent are set aside insofar as the recovery is concerned. However, it is open to the respondents to proceed against the petitioner, after issuing fresh notice and affording a reasonable opportunity of hearing to the petitioner and thereafter, pass appropriate orders in accordance with law insofar as revision of scale of pay, if any, as expeditiously as possible, more preferably, within a period of twelve weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed. No costs.

**16.03.2022**

Index : Yes / No  
Internet : Yes / No  
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W.P.No.25597 of 2021

**D.KRISHNAKUMAR. J**

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To

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