



W.P.(MD)No.3894 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.3894 of 2020

and

W.M.P.(MD)Nos.3295 of 2020 and 18568 of 2021

M.Nagapandi

... Petitioner

Vs.

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.

2. The Deputy Director of Health Services,
Vivekanadar Street,
Kenikarai,
Ramanathapuram.

3. The Block Medical Officer,
Government Primary Health Centre,
Uchipuli,
Ramanathapuram District.

... Respondents



W.P.(MD)No.3894 of 2020

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records on the file of the third respondent vide proceedings in Na.Ka.No.397/A1/2019 dated 12.11.2019 and subsequent proceedings of the third respondent for recovery vide Na.Ka.No.397/A1/2019 dated 10.02.2020 and quash the same as illegal and devoid of merits.

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.R.Baskaran
Additional Advocate General
Asst. by Mr.G.V.Vairam Santhosh
Additional Government Pleader

O R D E R

The impugned proceedings passed by the third respondent in Na.Ka.No.397/A1/2019, dated 12.11.2019 and Na.Ka.No.397/A1/2019 dated 10.02.2020, are under challenge in the present Writ Petition.

2. The case of the petitioner is that the petitioner is working as a Driver under "JANANI SHISHU SURAKSHA KARYAKRAM (JSSK) SCHEME" under the control of the third respondent / Block Medical



W.P.(MD)No.3894 of 2020

WEB COPY

Officer. The appointment is purely on contract basis under the scheme. He was appointed by the second respondent on 01.01.2013, on daily wages at the rate fixed by the District Collector, not exceeding Rs.4,000/-. The nature of the duty is 24 x 7 drop back facility for pregnant mother. During the year 2016, the Executive Secretary, District Health Society, Ramanathapuram, had fixed daily wages for contractual Driver as Rs.9,000/- as consolidated pay per month or daily wages approved by the District Collector whichever is higher. Every year, daily wages pay for casual labours is fixed by the District Collector as per District Economic Conditions. For the year 2016, the District Collector, vide order dated 09.05.2016, had fixed daily wages for various employees. As per the proceedings, daily wages fixed for Driver is Rs.452/- for the year 2016. Accordingly, the second respondent fixed daily wages as Rs.452/- per day and paid in monthly. In the year 2017, the District Collector, had fixed the daily wages for Driver is Rs.493/-. As per the proceedings, the petitioner has received daily wages from the third respondent every month. At some point of time, the petitioner was not disbursed with salary from January 2018 onwards and after repeated request for wages, the second respondent has issued the impugned proceedings



W.P.(MD)No.3894 of 2020

dated 21.03.2018, by stating that the petitioner has been paid excessively of Rs.33,970/- and directed to pay in the account of the second respondent immediately. Hence, the petitioner has filed Writ Petition in W.P.(MD) No.17208 of 2018, challenging the recovery order passed by the third respondent, vide proceedings dated 21.03.2018. This Court, by order, dated 29.01.2018, quashed the recovery order and directed to provide opportunity to the petitioner and pass order, and further directed to pay salary from the month of January 2018 to March, 2019. Now, the third respondent has passed the impugned orders. Challenging the same, the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner is a contract employee and as per the order of the District Collector, the petitioner received the monthly salary and there is no misrepresentation on the part of the petitioner. Thereafter, the petitioner's salary was stopped and directed to disburse the excess amount to the second respondent, and it is not sustainable and accordingly, he prayed for an appropriate orders.



W.P.(MD)No.3894 of 2020

WEB COPY

4. The learned Additional Advocate General appearing for the Respondents would submit that the third respondent had disbursed the salary to the petitioner as per the direction of this Court and repaid the recovered amount to him. Thereafter, the third respondent, as per the liberty granted by this Court, had issued notice to the petitioner seeking explanation. But, the explanation submitted by the petitioner was not satisfactory. Therefore, the third respondent has passed the impugned orders that the excess payment to the petitioner has to be repaid. He further submitted that the petitioner has been terminated from the service due to his illegal activities.

5. Heard the learned counsel appearing for the parties and have perused the materials placed before this Court.

6. The issue that arises in the present case has no longer *res integra* and is already covered by the decision of the Hon'ble Apex Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer)*** reported in ***2015 (4) SCC 334***. In this regard, it is relevant to refer to the decision of the



W.P.(MD)No.3894 of 2020

WEB COPY

Hon'ble Apex Court in the case of **White Washer** (*supra*), which reads as under:

".....12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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



W.P.(MD)No.3894 of 2020

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."

7. Considering the above submissions and taking into consideration the ratio laid down by the Hon'ble Apex Court in the case of ***White Washer (supra)*** and the fact that the recovery of excess payment from the employees would be impermissible in law, this Court is inclined to set aside the impugned orders dated 12.11.2019 and 10.02.2020 and accordingly, are set aside. The respondents are directed to return the amount, if any recovered.

8. With the above observations, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.12.2022
(1/2)

Index : Yes / No
Speaking Order : Yes / No
vji



W.P.(MD)No.3894 of 2020

WEB COPY

To

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.
2. The Deputy Director of Health Services,
Vivekanadar Street,
Kenikarai,
Ramanathapuram.
3. The Block Medical Officer,
Government Primary Health Centre,
Uchipuli,
Ramanathapuram District.



WEB COPY



W.P.(MD)No.3894 of 2020

M.DHANDAPANI,J.

vji

**W.P.(MD)No.3894 of 2020
and
W.M.P.(MD)Nos.3295 of 2020 and 18568 of 2021**

**06.12.2022
(1/2)**