



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.19278 of 2017

and

W.M.P. (MD) .Nos.15603, 15604 of 2017 and 22143 of 2018

M.M.Pandiaraj

... Petitioner

Vs.

1.The Joint Director of Medical and Rural Health Service (TB),
State TB Officer,
Teynampet,
Chennai - 600 006.

2.The Deputy Director of Medical and Rural Health Service (TB),
Government Hospital Premises,
Virudhunagar,
Virudhunagar District.

3.The District Collector,
District Collectorate,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified mandamus, to call for the records pertaining to the Impugned proceedings in Na.Ka. No. 78 / THU.EE.MA.PA(KASAM) / 2016 dated 03.03.2017 on the file of the second respondent, the Impugned Order in Ref No.1438/SHS-RNTCP/2017 dated 02.05.2017 on the file of the first respondent and Na.Ka.No.78/THU.EE.MA.PA(KASAM)/2016 dated 09.05.2017 on the file of the second respondent and quash the same as illegal; and consequently issue a direction, directing the Respondents No.1 and 2 to refix the Petitioners Pension Pay with interest within the time period stipulated by this Court.

For Petitioner : Mr.G.Karthik
For Mr.T.Lajapathi Roy

For Respondents : Mr.C.Baskaran,
Government Advocate

ORDER

This Writ Petition is filed challenging the impugned orders dated 03.03.2017, 02.05.2017 and 09.05.2017 with a consequential relief to refix the Petitioners Pension Pay with interest.

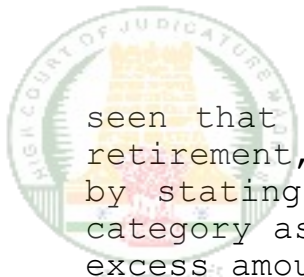
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2. The petitioner had retired as Health Educator under the second respondent on 31.05.2015. Initially, he joined the service on 28.11.1977 as Paramedical worker. While in service, the petitioner submitted a representation to the concerned authorities to fix his salary as per G.O.Ms.No.110, Health and Family Welfare Department dated 06.05.2014. But the respondents have not considered the petitioner's representation. However, the petitioner was continued his service without proper fixation of salary. The petitioner also made several representations on the Grievance Redressal Day and the same was not considered by the respondents. Without considering the petitioner's grievances, the respondents passed the impugned order stating that there was a wrongful fixation of salary and the petitioner has received excess payment to the tune of Rs.1,34,359/- (Rupees One Lakh Thirty Four Thousand and Three Hundred and Fifty Nine only). By citing the same reason, the respondents have already deducted Rs.51,000/- (Rupees Fifty One Thousand only) from the petitioner. After retirement, by citing the same reason, the respondents cannot deduct Rs.1,34,359/- from the petitioner. Moreover, such recovery is not permissible in view of latest law laid down by the Hon'ble Apex Court judgment in **State of Punjab Vs. Rafiq Masih (White Washer), (2014) 8 SCC 883**. Since the petitioner comes under 'C' Category, the *Rafiq Masih* case is applicable to the petitioner. Hence, the petitioner submitted that the impugned recovery order is illegal and prayed to allow the Writ Petition. It is further submitted by the petitioner that due to pendency of this issue of fixation of correct salary the petitioner was denied terminal benefits and prayed to direct the respondents to pay the terminal benefits.

3. The respondents have filed a counter stating that the petitioner's salary was fixed as per G.O.Ms.No.110 dated 06.05.2014. Hence, the prayer to refix the salary cannot be considered. In such circumstances, the impugned order is passed directing the petitioner to remit the excess payment. Hence, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.G.Karthik, learned counsel for Mr.T.Lajapathi Roy, appearing for the petitioner and Mr.C.Baskaran, learned Government Advocate appearing for the respondents and perused the records.

5. On perusing the counter affidavit of the respondents, this Court is of the considered opinion that the respondents have fixed the salary as per G.O.Ms.No.110 dated 06.05.2014. But, it is not stating from which date the correct fixation was carried out. It is



seen that the petitioner has already repaid Rs.51,000/-. In retirement, the respondents are proceeding to recover Rs.1,34,359/- by stating the same reason. Since the petitioner comes under 'C' category as per Rafiq Masih case, the respondents cannot recover the excess amount. Therefore, this Court is passing the following order:

(*) (a). The respondents are directed to repay a sum of Rs.1,34,359/- [Rupees One Lakh Thirty Four Thousand and Three Hundred and Fifty Nine Only], which was already recovered from the petitioner

b. The respondents are at liberty to refix the salary as per G.O.Ms. No.110.

c. The respondents shall pay the terminal benefits to the petitioner within a period of six (6) weeks from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

(*) Corrected as per the order of this court dated 08/02/2023 made in WP (MD) 19278/2017.

Sd/-

Assistant Registrar (CS III)

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10/02/2023

Sub Assistant Registrar (CS II)

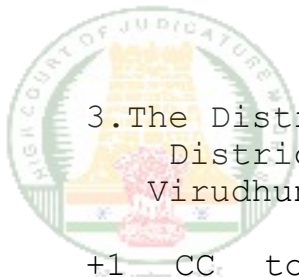
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To

To be substituted to the order which is already despatched on 25/01/2023.

1. The Joint Director of Medical and Rural Health Service (TB),
State TB Officer,
Teynampet, Chennai - 600 006.

2. The Deputy Director of Medical and Rural Health Service (TB),
Government Hospital Premises,
Virudhunagar, Virudhunagar District.



3.The District Collector,
District Collectorate,
Virudhunagar District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-59014[F] dated
01/12/2022)

+1 CC to M/s.SPL.GP (SR-59319, 7333[F])

+1 CC to MR.S.RAJASEKAR, Advocate (SR-7026[F])

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_ED(24.01.2023) 4P 6C
MK(10.02.2023) 4P 7C