



W.P.(MD)No.20529 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 20529 of 2017

and

W.M.P.(MD)Nos. 16824 & 16825 of 2017

P.Sironmani

... Petitioner

Vs.

1. The State of Tamil Nadu, Represented by its
Principal Secretary,
Health and Family Welfare (L2) Department,
Secretariat, Chennai.
2. The Accountant General,
O/o. the Accountant General (Accounts & Entitlements),
Tamil Nadu,
361, Anna Salai, Teynampet,
Chennai – 600 018.
3. The Regional Joint Director,
Treasuries and Accounts Department,
No.1, Ground Floor, Class-4 Residence,
B.S.N.L. Compound, Vannarapettai,
Tirunelveli – 627 003.



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4. The Assistant Treasury Officer,
O/o. the Sub-Treasury Office,
Palayamkottai,
Tirunelveli District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, or any other appropriate writ or order or direction in the nature of writ calling for the records relating to the impugned order issued by the 3rd respondent in his proceedings in e.f.775/2017/,> dated 18.09.2017 and consequential impugned order passed by the 4th respondent in his proceeding in e.f.vz;.778/2017/m1> dated 20.09.2017 and quash the same as illegal.

For Petitioner : Mr.Mohammed Suhail, for
M/s.Ajmal Associates

For R-1, 3 & 4 : Mr.P.Thambidurai,
Government Advocate (Civil Side)

For R-2 : Mr.P.Gunasekaran,
Standing Counsel

ORDER

This Writ Petition has been filed to quash the impugned order issued by the 3rd respondent in his proceedings in e.f.775/2017/,> dated 18.09.2017 and consequential impugned order passed by the 4th respondent in his proceeding in



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e.f.vz;778/2017/m1> dated 20.09.2017.

2. The petitioner was appointed as Health Assistant on 01.09.1958 and temporarily promoted as Health Inspector on 11.05.1962. Thereafter, he was ousted on 16.10.1962 on account of want of vacancy and subsequently, appointed as Health Inspector through TNPSC on 04.02.1962 and once again he was ousted from service on 01.03.1963 and he was reappointed on 21.03.1963 as Health Inspector. Subsequently, he was promoted as Block Health Supervisor on 19.10.1992 and was conferred selection grade in the said post. The petitioner retired from service on 30.04.1998 on reaching the age of superannuation and has served 39 years 8 months.

3. The Government has issued G.O.Ms.No.287 Finance (Pay Cell) Department, dated 22.07.2013, thereby, revised the scale of pay of certain categories of post in the Public Health and Preventive Medicine Department, on the basis of the recommendation of the Pay Grievance Redressal Cell. Thereafter, One Man Commission was constituted to examine about the pay anomalies. Accordingly, the Government has issued G.O.Ms.No.297 Finance (Pay Cell) Department, dated 26.08.2010 directed the revision of scale of pay as Rs.



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9300-34800+4400 from the Scale of pay Rs.9300-34800+4300. The government had passed another G.O.Ms.No.235, dated 01.06.2009 revised the pensionary benefits of the employees who were already retired and in the said G.O. notional effect was given from 01.01.2006 and monetary benefits from 01.01.2007. The petitioner's pay was also revised and he was receiving revised pension. The 4th respondent, vide proceedings, dated 10.08.2017 informed the petitioner that the petitioner is not entitled to the revised pension. Therefore, the amount already paid to the petitioner was directed to be recovered and the petitioner was directed to accord consent. On receipt of the said order, the petitioner has submitted an explanation on 23.08.2017 and based on the explanation, the 4th respondent vide proceedings, dated 31.08.2017 sought for further clarification from the 3rd respondent. The 3rd respondent, vide proceedings, dated 18.09.2017 has ordered that the post of Block Health Supervisor is a feeder category to the post of Technical Personal Assistant. Therefore, the revision should be restricted to the promotional category of the Technical Personal Assistant and the said impugned order was communicated by the 4th respondent to the petitioner. Thereafter, through order, dated 20.09.2017, directed to recover the excess amount.



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4. The contention of the petitioner is that the Government, vide letter, dated 11.03.2013, furnished under Right Information Act, where, it is clarified the issue by stating that there is no Government order or letter classifying the post of Block Health Supervisor as a feeder category to the post of Technical Personal Assistant. The petitioner has relied on the said letter and submitted that since there is no Rule classifying the post of Block Health Supervisor as feeder category, therefore the petitioner is entitled to the selection grade scale of pay fixed in the G.O.Ms.No.287 Finance (Pay Cell) Department, dated 22.07.2013 and prayed to quash the impugned order and consequently direct the respondents to continue to pay the revised pension.

5. At the time of admission, this Court has granted interim direction not to recover the excess amount. The respondents have filed counter along with vacate stay petition. The respondents have stated in the counter that the petitioner has attained superannuation on 30.04.1998 and service pension was also sanctioned on 06.04.1998 and the petitioner was receiving pension of Rs.1427/-per month, with effect from 01.04.1998 and thereafter the pension was



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revised periodically. The petitioner was initially appointed as Health Inspector on 21.03.1963, then promoted as Block Health Supervisor on 19.10.1992. The petitioner was awarded selection grade in the cadre of Block Health Supervisor, from 01.04.1997. Subsequently, he attained superannuation on 30.04.1998. Then the revised pension proposal as G.O.No.235 Para.2 Clause (vi) based on the G.O.Ms.No.287 dated 22.07.2013 and the Government Letter No.63305 / Pay Cell / 2010-1 Finance (PC) Department dated 08.11.2010 was received by the Treasury Office. In the proposal, the pension amount was revised from Rs.9,153/- to Rs.10,500/-, with effect from 01.04.2013. Subsequently, the revision was given effect and all the monetary benefit arrears amounting to Rs.1,49,624/- was paid to the petitioner. But the writ petitioner is not eligible to get the revised pension of Rs.10,500/- because of the availability of the next level promotional post of Technical Personal Assistant from the post of Block Health Supervisor (which post the petitioner had last served). Further the scale of pay of Technical Personal Assistant is Rs.9300-34800+GP 4600 only. The Audit Inspection Team raised the audit objection that the petitioner is not eligible for the revised pension of Rs.10,500/- in the scale of pay of Rs.15600-39100-5400. Therefore, it was directed to recover the excess amount of Rs.1,49,624/- which was paid from



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01.04.2013 to 31.07.2017. The applicability of selection grade and special grade as per Tamil Nadu Revised Scale of pay rules, 1998, provided further selection grade and special grade shall be regulated as follows:

“i) for post having no provisional avenue, as per G.O.Ms.No.114, dated 06.05.2014, the Selection Grade and Special Grade Scales of pay based on the Ordinary Grade Scale of pay shall be allowed as indicated in Schedule-II.

ii). for posts having promotional posts, if the Selection Grade scale of pay indicated in the said schedule is higher than the pay scale of promotional posts, the Selection Grade scale should be restricted to the pay scale of the first level promotion post. It is submitted that, in view of the submission in this para the Writ Petitioner is only entitled to the post of Technical Personal Assistant (scale of pay Rs.9300-34800 + 4600) which is the next level promotion of Block Health Supervisor (scale of pay Rs.9300 – 34800 + 4500). Therefore, the Writ Petitioner is not entitled to get the Selection Grade Scale of pay of Rs. 15600-39100 + 5400 which was sanctioned by the O/o. the Deputy Director of Health Services, Tirunelveli as per Government Letter No.63305/Pay Cell/2010-1 dated 08.11.2010 only.”



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Therefore, the petitioner is not entitled to the revision of pension and the hence he is bound to return the excess payment and prays to dismiss the writ petition.

6. Heard Mr.Mohammed Suhail, for M/s.Ajmal Associates, learned counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate (Civil Side) appearing for R-1, 3 & 4 and Mr.P.Gunasekaran, learned Standing Counsel appearing for R-2. Perused the material documents available on record.

7. It is seen from the records that the petitioner was appointed as Health Inspector Grade I and thereafter, promoted as Block Heath Supervisor. The contention of the petitioner is that he is eligible for the “selection grade scale of pay” to the post of Block Health Supervisor, since there is no promotional avenue to the Block Health Supervisor, for which the petitioner is relying on the communication issued by the Director of Public Health and Preventive Medicine, vide proceedings, dated 27.01.2015.



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8. However, the said contention was refuted by the 2nd respondent and submitted that the Adhoc rules was framed for Block Health Supervisor in G.O.Ms.No.1883, Health and Family Welfare Department, dated 26.09.1998. Subsequently, the Government has created 384 Health Inspector posts. Since there was no promotional avenue, therefore, there was series representation by the persons who were holdings the posts and the Government has periodically issued Government Orders and granted promotion. This would be evident from the communication, dated 11.02.2013 by the Secretary to the Government to the Director of Public Health and Preventive Medicine, where, it has been stated, the panel for the post of Technical Personal Assistant during the years 2007 & 2008 has been approved by Government taking into consideration the post of Block Health Supervisor as feeder category for filling up of the post of Technical Personal Assistants by following the amended Adhoc rules, vide G.O.(Rt)No.985, Health and Family Welfare (L2) Department, dated 28.06.2007 and G.O.(Rt).619, Health and Family Welfare (L2) Department, dated 03.04.2008.

9. Even though, there is no proper Adhoc rules, for each year the



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government had issued guidelines to grant promotion to the post of Block Health Supervisor, whereby the said post is considered as feeder category to the post of Technical Personal Assistant. Therefore, the claim of the petitioner that there is no promotional post is incorrect.

10. In view of the foregoing reasons, this Court is of the considered opinion that the plea of the respondent is correct. Since the Government without formulating proper adhoc rules, every year issued Government Orders and has considered the Block Health Supervisor as the feeder category to the post of Technical Personal Assistant and to substantiate this claim has produced G.O. (Rt)No.985, Health and Family Welfare (L2) Department, dated 28.06.2007 and G.O.(Rt).619, Health and Family Welfare (L2) Department, dated 03.04.2008. Therefore, the claim of the petitioner that there is no promotion from the post of Block Health Supervisor is incorrect. Consequently, the claim of the petitioner to fix under selection grade also is incorrect.

11. The petitioner was 78 years at the time of filing the writ petition



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and now the petitioner is aged about 83 years. Therefore, this Court deems it fit not to recover the amount which was already paid to the petitioner. However, the Learned Counsel appearing for the petitioner submitted that some of the installments were recovered. Since the petitioner is not entitled to the said amount, the said amount if repaid to the petitioner it would be illegal amount in the petitioner's hands and hence the petitioner cannot claim the amount, which was already recovered. The respondents need not recover any further amount and the respondents need not repay the already recovered amount. However the respondents are directed to refix the correct fixation and disburse the pension, within a period of eight weeks from the date of receipt of a copy of the order.

12. With the above directions, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

1. The State of Tamil Nadu, Represented by its
Principal Secretary,
Health and Family Welfare (L2) Department,
Secretariat, Chennai.
2. The Regional Joint Director,
Treasuries and Accounts Department,
No.1, Ground Floor, Class-4 Residence,
B.S.N.L. Compound, Vannarapettai,
Tirunelveli – 627 003.
3. The Assistant Treasury Officer,
O/o. the Sub-Treasury Office,
Palayamkottai,
Tirunelveli District.



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S.SRIMATHY, J

ksa

**Order made in
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