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W.P.No.11762 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.11762 of 2012

V.Ranganathan

... Petitioner

-Vs-

1. The Director,
Public Health and Preventive Medicine,
Chennai-6.

2. The Deputy Director of Health Services,
Vellore.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the second respondent herein in R.No.214/A3/2003 dated 06.03.2012 and quash the same and consequently direct the respondents to refix the petitioners pay scales in the cadre of Block Health Supervisor by counting the period worked in the Lower Post and in the Higher Post and disburse arrears of salary.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mr.L.S.M.Hasan Fizal

Additional Government Pleader



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ORDER

This writ petition has been filed challenging the order passed by the second respondent in R.No.214/A3/2003 dated 06.03.2012, thereby directed to return a sum of Rs.26,324/- for the reason that the said amount was paid excess.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

3. The petitioner had joined in the service as Health Assistant on 09.11.1967. Thereafter, the said post was re-designated as Health Supervisor from 04.11.1988. He was promoted to the post of Block Health Supervisor from 28.06.2003. Thereafter, he was retired from service on 30.04.2007, due to his age of attainment of superannuation. The petitioner submitted a representation to the second respondent for counting the period in which he had worked already in the earlier post for the purpose of conferment of selection and special grade in the promoted post and sought for re-fixation of scales in Block Health Supervisor post. However, by an order dated 02.12.2004, the second respondent revised his date of increment from 01.01.1989 to 01.10.1989 and consequently directed the petitioner to remit the excess pay and allowances for the period from 04.11.1988 to 27.06.2003. Therefore, the petitioner



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submitted another representation to reconsider the recovery order. However, there was no reply and as such, the petitioner filed an appeal before the first respondent. The said request was rejected by an order dated 17.08.2006.

4. The petitioner had taken a specific stand that he was not served with any notice and no enquiry was conducted to hold him responsible and liable for the recovery order. In fact, the petitioner was directed by the second respondent to produce the order passed for changing the date of increment. Though no order was passed, an entry was made in Service Register by the Medical Officer, Punnai. The said entry was made based upon his representation for fixation of pay on par with his junior. The said revision was made in the year 1989 itself. Thereafter, he was sanctioned increment with effect from first January of every year, till his promotion to the post of Block Health Supervisor from 28.06.2003. Therefore, the petitioner submitted so many representations to re-fix his pay scales by taking into account of the services rendered in the lower post of Multipurpose Health Supervisor for conferring the Selection grade in the promoted post of Block Health Supervisor. On receipt of the said representation, the second respondent passed an order dated 02.12.2004, thereby cancelled the increments sanctioned from 01.01.1989 to 01.01.1995, thereby re-fixed the increment and revised his salary as Rs.6,900/- with effect



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from 01.01.1996 and directed the petitioner to remit the excess pay and allowances. Therefore, the petitioner approached this Court in W.P.No.39626 of 2006 challenging the order passed by the second respondent and consequential order of the first respondent dated 17.08.2006. This Court passed the order as follows:-

“ 9. Therefore, without going into the merits of the matter and on the ground that there has been no notice and enquiry before ordering recovery from the petitioner, the impugned order dated 2.12.2004 and the consequential order passed by the first respondent on 17.8.2006 notice of enquiry to the petitioner and after hearing him, pass appropriate orders on merits in accordance with law. If any amount is withheld more than the amount of recovery to be recovered from the petitioner, the said excess amount shall be returned to the petitioner together with 9% interest per annum from the date of recovery till the date of payment. On such notice of enquiry being received, the petitioner shall co-operate with the respondents for early completion of the enquiry.

10. The notice of enquiry shall be issued by the respondents within a period of three months from the date of receipt of a copy of this order to enable the petitioner to participate in the enquiry and explain his case. Thereafter the entire enquiry proceedings should be completed and final orders be passed within three months from the date of issuance within the time stipulated by this court and the enquiry is not completed and order passed within the time stipulated, the amount retained by the respondents shall be returned to the petitioner immediately.”

5. Thereafter, the second respondent issued notice to the petitioner dated 10.02.2012, for appearance of the petitioner for enquiry regarding DCRG wages. The petitioner also submitted his representation for revision of his pay scale prior to the order of recovery. Therefore, again the second respondent



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directed the petitioner to appear for personal enquiry along with all the records.

The petitioner also appeared for enquiry and submitted the records. It was not considered and passed an order to recover the excess pay of Rs.25,327/- and a sum of Rs.997/- towards excess TA drawn as per the Audit objection. The order impugned also says that if there is any pay anomaly, on representation, the same will be rectified after getting orders from the Directorate.

6. A perusal of the counter filed by the respondents revealed that on perusal of Service Register of the petitioner, it was found that the periodical increments which was due on 1st October of every year have been changed as 1st January of every year from 01.01.1989 to 27.06.2003. But the Medical Officer, Primary Health Centre, by his communication dated 11.09.2004 stated that the particulars in regard to change of date of increment were not available in the Primary Health Centre. Therefore, the petitioner was requested to furnish the details, for which the petitioner replied that non-availability of such orders was already informed. Therefore, pay fixation done by the Medical Officer, Primary Health Centre, Punnai was cancelled and revised order were issued on 02.12.2004. Aggrieved by the same, the petitioner preferred an appeal and the same was rejected by the first respondent. Though the petitioner made specific representation to rectify the pay anomaly, instead of rectifying the mistake, the



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second respondent ordered for recovery without even cancelling the entry made in the Service Register. That apart, the Medical Officer, has no power to rectify the pay anomaly. The Medical Officer endorsed in the Service Register of the petitioner and without even issuing the same, the second respondent passed the impugned order. In fact, the petitioner had drawn the increments from 01.01.1989 to 28.06.2003. Admittedly, there was no audit objection and it was approved by them. When the petitioner sought for re-fixation of the pay scales in the promoted category of Block Health Supervisor, the present impugned order has been passed. Further, the revision and the recovery has been done after 23 years and that too without any reasons. If any excess payment is paid by mistake, the same cannot be recovered that too after a period of 23 years.

7. In view of the above, the impugned order cannot be sustained and is liable to be quashed. Accordingly, the order passed by the second respondent in R.No.214/A3/2003 dated 06.03.2012 is hereby quashed. The petitioner is at liberty to submit a fresh representation to the first respondent for re-fixation of his pay scale in the cadre of Block Health Supervisor. On receipt of the same, the first respondent is directed to consider the same and pass orders on merits and in accordance with law, within a period of eight weeks thereafter.



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8. Accordingly, this writ petition is allowed. There shall be no order as to

costs.

05.09.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. The Director,
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Chennai-6.
2. The Deputy Director of Health Services,
Vellore.

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