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W.P.No.6945 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.6945 of 2022
and WMP.No.6980 of 2022

R. Soundararajan

... Petitioner

Vs.

1.Deputy Director,
O/o. Deputy Director of Health Services,
Kanchipuram.

2.The Administrative Officer,
District Audit Party,
O/o. Deputy Director of Health Services,
Kancheepuram.

3.Block Medical Officer,
Government Primary Health Centre,
Ezhichur,
Kancheepuram – 631 605.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent in Na.Ka.No.633/2021/FIN-1 dated 21.12.2021, quash the same and to direct the respondents to continue to disperse the same allowance without any reduction or recovery.



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For Petitioner : Mr.M. Ravi

For Respondents : Mr.P. Gurunathan,
Additional Government Pleader

ORDER

The petitioner was appointed as Health Inspector Grade-II in the year 1989 and ultimately, was promoted to the post of Block Health Supervisor in the year 2009. Through the impugned order dated 21.12.2021, the respondents claimed that the petitioner's pay scale was wrongly fixed for the period between August 2010 to November 2021 and an excess amount of Rs.4,58,537/- was paid and thereby has called upon the petitioner and has initiated recovery proceedings.

2. The learned counsel for the petitioner drew attention of this Court to the proceedings of the Chief Civil Surgeon, Government Primary Health Centre, Elichur in R.Dis.No.453/2012 dated 03.08.2012, which is the order revising the petitioner's pay scale in accordance with the recommendation of the One Man Commission issued in G.O.Ms.No.297, Finance (PC) Department dated 26.08.2010. He also drew attention to the audit objections, pointing out certain discrepancies and irregular pay fixation.



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3. Per contra, the learned Additional Government Pleader appearing for the respondents, placed reliance on the averments of the counter-affidavit and submitted that the Government has issued certain clarification dated 16.11.2018, to take necessary action against the excess payments made and therefore, there is no infirmity in the impugned order.

4. As pointed out by the learned counsel for the petitioner, the audit objections clearly states that the revision of the pay scales would be extended only to the employees, who have been recommended by the One Man Commission in G.O.Ms.No.297/Finance (PC) Department dated 26.08.2010, Govt.letter No.51082/PC/2010-1Finance dated 15.09.2010 & Govt.letter No.63305/PC/2010-1/Finance (PC) dated 08.11.2010 and not to others and allege excess payment.

5. However, the orders of revision of the petitioner's pay scale dated 03.08.2012 reveals that the revision was made based on One Man Commission issued in G.O.Ms.No.297 dated 26.08.2010. Apparently, the internal Audit Department has misconstrued the petitioner's pay revision, which has been rightly made even according to them. Hence, the



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consequential impugned order of the third respondent, cannot be sustained. Insofar as the ground raised by the learned Additional Government Pleader that the orders of revision and recovery was done pursuant to the Government clarification dated 16.11.2018, is not a ground raised by the respondents in the impugned order. Even otherwise, the Government clarification is only after the revision was made and therefore, cannot have a retrospective effect.

6. Above all, the Hon'ble Supreme Court in the case of '*State of Punjab Vs. Rafiq Masih (White Washer)*' reported in '*(2015) 4 SCC 334*', has held that recovery of any excess payment made, owing to the mistake of the Department for over a period of 5 years, cannot be made. Since the respondents have sought to make recovery from August 2010 onwards, the same is impermissible in law.

7. For all the foregoing reasons, in case the respondents have recovered any amount pursuant to the impugned order dated 21.12.2021, the same shall be forthwith return, in any event, within a period of two (2) weeks from the date of receipt of a copy of this order.



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8. With the above direction, the Writ Petition stands disposed of. No costs. Connected miscellaneous petition is closed.

26.06.2023

Speaking/Non-speaking Order

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

1. Deputy Director,
O/o. Deputy Director of Health Services,
Kanchipuram.
2. The Administrative Officer,
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3. Block Medical Officer,
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M.S.RAMESH,J.

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