



W.P.(MD)Nos.5580, 5582, 5583 and 5586 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.07.2023

PRONOUNCED ON : 28.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.5580, 5582, 5583 and 5586 of 2021
and

W.M.P(MD)Nos.4420, 4422, 4424 and 4426 of 2021

1.W.P(MD)No.5580 of 2021:-

A.Auxilia Mary

... Petitioner

Vs.

1.The Director of Medical and Rural Health Services,
DMS Campus, Teynampet,
Chennai – 600 006.

2.The Joint Director of Medical and Rural Health Services
and Family Welfare,
Theni @ Periyakulam,
Theni District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent ie., Na.Ka.No.6551/NiPi2/2019, dated 15.02.2021 of the Joint Director of Medical and Rural Health Services and Family Welfare, Theni @ Periyakulam and quash the same and consequently, direct the second respondent to refix the pay as per G.O.No.340, Finance (Pay Cell) Department, dated 26.08.2010.



WEB COPY



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.M.Prakash
Additional Government Pleader

2.W.P(MD)No.5582 of 2021:-

S.Muthumariyammal ... Petitioner

Vs.

1.The Director of Medical and Rural Health Services,
DMS Campus,
Teynampet,
Chennai – 600 006.

2.The Joint Director of Medical and Rural Health Services
and Family Welfare,
Theni @ Periyakulam,
Theni District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent ie., Na.Ka.No.6551/NiPi2/2019, dated 15.02.2021 of the Joint Director of Medical and Rural Health Services and Family Welfare, Theni @ Periyakulam and quash the same and consequently, direct the second respondent to refix the pay as per G.O.No.340, Finance (Pay Cell) Department, dated 26.08.2010.

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.M.Prakash
Additional Government Pleader



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

3.W.P(MD)No.5583 of 2021:-

M.Selvi Suguna

... Petitioner

Vs.

1.The Director of Medical and Rural Health Services,
DMS Campus,
Teynampet,
Chennai – 600 006.

2.The Joint Director of Medical and Rural Health Services
and Family Welfare,
Theni @ Periyakulam,
Theni District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent ie., Na.Ka.No.6551/NiPi2/2019, dated 15.02.2021 of the Joint Director of Medical and Rural Health Services and Family Welfare, Theni @ Periyakulam and quash the same and consequently, direct the second respondent to refix the pay as per G.O.No.340, Finance (Pay Cell) Department, dated 26.08.2010.

For Petitioner

: Mr.S.Visvalingam

For Respondents

: Mr.M.Prakash

Additional Government Pleader



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

4.W.P(MD)No.5584 of 2021:-

K.Jansi Rani

... Petitioner

Vs.

1.The Director of Medical and Rural Health Services,
DMS Campus,
Teynampet,
Chennai – 600 006.

2.The Joint Director of Medical and Rural Health Services
and Family Welfare,
Theni @ Periyakulam,
Theni District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent ie., Na.Ka.No.6551/NiPi2/2019, dated 15.02.2021 of the Joint Director of Medical and Rural Health Services and Family Welfare, Theni @ Periyakulam and quash the same and consequently, direct the second respondent to refix the pay as per G.O.No.340, Finance (Pay Cell) Department, dated 26.08.2010.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.M.Prakash
Additional Government Pleader



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

WEB COPY

COMMON ORDER

The present Writ Petitions have been filed by the petitioners to quash the impugned order of the second respondent/the Joint Director of Medical and Rural Health Services and Family Welfare, Theni @ Periyakulam, dated 15.02.2021 and consequently, to direct the second respondent to refix the pay as per G.O.No.340, Finance (Pay Cell) Department, dated 26.08.2010.

2.The learned counsel appearing for the petitioners took me through each and every contention putforth by him in his affidavit.

3.Per contra, the learned Additional Government Pleader appearing for the respondents vehemently opposed that the Writ Petitions ought to be dismissed and reiterated each and every contention of his counter-affidavit.

4.Heard Mr.S.Visvalingam, learned counsel appearing for the petitioners and Mr.M.Prakash, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

WEB COPY

5.The petitioners were recruited as Typists by TNPSC under Group-IV examination held in the year 2006-2007. They were allotted to the Medical Examination Department and were posted as Typists and joined duty on 19.08.2009, 28.08.2009, 24.08.2009 and 10.08.2009 respectively. Thereafter, they were promoted as Assistants as per Reference No.61995/E2/1/2012, dated 25.10.2012 of the Directorate of Medical and Rural Health Services, Chennai. The petitioners in W.P(MD)Nos.5580 and 5582 of 2021 viz., A.Auxilia Mary and S.Muthumariyammal joined duty as Assistants in the office of the Joint Director of Health Services and Family Welfare, Theni @ Periyakulam on 26.10.2012 and 01.02.2013 respectively; the petitioner in W.P(MD)No.5583 of 2021 viz., M.Selvi Suguna, joined duty as Assistant in the office of the Government Rajaji Hospital, Madurai on 15.11.2012 and the petitioner in W.P(MD)No.5586 of 2021 viz., K.Jansi Rani joined duty as Assistant in the office of the Government Hospital, Bodinayakanur on 21.12.2012.

6.The pay of the petitioners was refixed as per G.O.No. 340, Finance (Pay Cell) Department, dated 26.08.2010, vide proceedings of the second respondent, dated 23.08.2018, taking into

6/13



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

account the date of TNPSC Group-IV examination held in the year 2006-2007. Now, as per the impugned order, dated 15.02.2021 of the second respondent, it is claimed that the refixation done as per G.O.No.340, Finance (Pay Cell) Department, dated 26.08.2010 is not correct and recovery of payment has been ordered accordingly.

7.At the first instance, the refixation was done by the department taking into account the date of appearance in the Group-IV examination of the year 2006-2007 and the alleged mistake was done by the department. However, now, vide the impugned order, dated 15.02.2021, the second respondent has calculated by refixing the petitioners' pay from the date of joining in the department as Typists and on that basis, recovery has been ordered. The petitioners claim that the department cannot recover the excess payment already made, which is not at the fault of the employee. Hence, the orders dated 15.02.2021 passed by the second respondent are impugned in these Writ Petitions.

8.The Honourable Apex Court in the case ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334***, has categorically held that recovery from



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

employees belonging to Class III and Class IV Service would be impermissible in law and the petitioners belonged to Group C service. On that basis, the learned counsel appearing for the petitioners contended that the petitioners being employees of Group C service category, recovery from them is impermissible in terms of the aforesaid Hon'ble Apex Court order.

9. Moreover, G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018, fully accepting the Judgment in the ***White Washer's case (cited supra)*** has reiterated that recovery from employees belonging to Class III and Class IV service or Group C and Group D service would be impermissible in law. Clause 4 of the said G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018 is extracted as follows:

"4. In view of the law declared by the Courts, the Government directs that the Administrative Departments of Secretariat, Heads of Department and Head of Offices are advised to deal with the issue of wrongful / excess payments made to Government servants / Pensioners / Family Pensioners in accordance with the decision of the



WEB COPY



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

Hon'ble Supreme Court in Civil Appeal No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc as detailed below.

(i). In all cases where the excess payments on account of wrong pay / pension / family pension fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc come to notice, immediate corrective action must be taken.

(ii). In a case like this where the authorities decide to rectify an incorrect order, a show-cause notice may be issued to the concerned employee / pensioner / family pensioner informing him/her of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee / pensioner / family pensioner to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee / pensioner / family pensioner.

(iii). Whenever any excess payment has been made on account of fraud,



WEB COPY



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

misrepresentation, collusion, favouritism, negligence or, carelessness, etc., roles of those responsible for overpayments in such cases, and the employees / pensioners / family pensioners who benefitted from such actions should be identified, and departmental/criminal action should be considered in appropriate cases.

(iv). Recovery should be made in all cases of overpayment barring few exceptions of extreme hardships as detailed in para-3 above. No waiver of recovery may be allowed without the approval of Finance Department.

(v). While ordering recovery, all the circumstances of the case should be taken into account. In appropriate cases, the concerned employee may be allowed to refund the money in suitable installments with the approval of Secretary to Government in the Administrative Department of Secretariat, in consultation with the Finance Department.

(vi). Wherever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc, interest would continue to be recovered from the employee as done hitherto."



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

10.Following the mandates of the said G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018 and on the basis of the **White Washer's case (cited supra)**, this Court has no hesitation to conclude that recovery from employee belonging to Group C service category is impermissible. Though my attention is drawn to the undertaking given by the petitioners, vide letter, dated 16.03.2018 addressed to the second respondent affirming to repay the amount in one instalment, if subsequently the pay refixation was found to be erroneous, this Court is of the considered view that such an undertaking cannot be relied upon by the respondents as a sword to scuttle down the protection conferred to the petitioners, by the verdict of the Hon'ble Apex Court in White Washer's case (cited supra).

11.That apart, in view of the specific bar in Clause 3 (i) of G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018, the impugned order dated 15.02.2021 passed by the second respondent is quashed. Accordingly, these Writ Petitions are allowed. There shall be no order as to costs.

28.07.2023

NCC : Yes

11/13



W.P.(MD).Nos.5580, 5582, 5583 and 5586 of 2021

Index : Yes
Internet : Yes

To

- 1.The Director of Medical and Rural Health Services,
DMS Campus,
Teynampet,
Chennai – 600 006.
- 2.The Joint Director of Medical and Rural Health Services
and Family Welfare,
Theni @ Periyakulam,
Theni District.



WEB COPY



W.P.(MD)Nos.5580, 5582, 5583 and 5586 of 2021

L.VICTORIA GOWRI, J.

ps

Pre-Delivery Order made in
**W.P.(MD)Nos.5580, 5582,
5583 and 5586 of 2021**

28.07.2023