



W.P.(MD).No.1093 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.1093 of 2013

and

M.P.(MD).Nos.1 and 2 of 2013 and 1 of 2015

and

W.M.P.(MD).No.10159 of 2017

A.Savarianandan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its,
The Secretary, Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Medical and Rural Health Services,
DMS, Anna Salai, Chennai – 600 006.
- 3.The Joint Director of Medical and Rural Health Services,
Cantonment, Tiruchirapalli – 620 001.
- 4.The Medical Officer, Government Office,
Gandhi Road, Srirangam – 620 006.

... Respondents



W.P.(MD).No.1093 of 2013

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the fourth respondent in Na.Ka.No.1199/Ni/2009 dated 15.06.2011 and quash the same.

For Petitioner : Mr.K.S.Vamsidhar

For Respondents : Mr.P.Thambidurai,
Government Advocate.

ORDER

This Writ Petition is filed to quash the impugned order dated 15.06.2011, wherein, the respondents sought to recover the amount which was paid to the petitioner in the post of Record Assistant.

2. The contention of the petitioner is that he was appointed as Record Clerk, thereafter, he was promoted as Record Assistant on 05.09.1994. Subsequently, the Government in the year 1997 reverted the petitioner to the post of Record Clerk, since the seniority among the Record Clerk should be fixed based on State wise and not District wise, thereafter promotion to the post of Record Assistant would be granted based on state wise seniority list.



W.P.(MD).No.1093 of 2013

Aggrieved over the same, the petitioner has challenged the re-fixation in O.A.No.5963/1997 and obtained an interim order. Based on the interim order, the petitioner had continued in the post of Record Assistant and receiving the salary. Subsequently, in the regular turn for promotion based on state wide seniority list, the petitioner was granted the Record Assistant post from 17.05.2002. Thereafter, the petitioner had continued in the said post until his superannuation that is on 31.07.2006 and he retired as Record Assistant. The O.A. application filed before the Tribunal was converted into the Writ Petition in W.P.(MD)No.28548 of 2006 and this Court vide order dated 11.08.2009 has dismissed the Writ Petition stating that the Government has issued G.O.Ms.No. 2 (P & AR) Department dated 02.01.1996, where the ratio for upgradation from the post of Record Clerk to Record Assistant was fixed as 5:1 and the seniority should be fixed for the whole Department and not for various branches. Based on the Government Order, the Writ Petition was dismissed. Now, the respondents sought to recover the amount which was paid to the petitioner from 1994 to 2002. The contention of the petitioner is that since the petitioner has retired from service, the amount that was sought to be recovered is for the year 1997 to 2002 which is beyond the period of 5 years, and based on the dictum laid down in *State of Punjab Vs. Rafiq Masih (White Washer)* reported in



W.P.(MD).No.1093 of 2013

(2015) 4 SCC 334, the respondents ought to be restrained from recovering the amount from the petitioner.

3. The petitioner was promoted and was actually working in the said post, hence this Court is of the considered opinion that the petitioner is entitled to the salary applicable to the said post. The Government issued G.O.Ms.No.2 (P & AR) Department dated 02.01.1996, which is applicable from the date of issuance of the Government Order i.e. from 02.01.1996. But the petitioner was promoted on 17.05.2002 based on the District wise seniority. Hence any promotion granted on or after 02.01.1996 should be based on this G.O. and any promotion prior to the said date ought to be based on the earlier prevailing method. Therefore, this Court is of the considered opinion that the petitioner is entitled to the salary from 1996 to 2002 also and hence the impugned order is quashed. As far as the entitlement is concerned, the petitioner is entitled to the said amount and hence the respondents are restrained from recovering the amount. If any amount is recovered, the same shall be paid to the petitioner. This order shall be implemented within a period of six (6) weeks from the date of receipt of a copy of this order.



W.P.(MD).No.1093 of 2013

4. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

24.01.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

- 1.The Secretary,
The State of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Medical and Rural Health Services,
DMS, Anna Salai, Chennai – 600 006.
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W.P.(MD).No.1093 of 2013

S.SRIMATHY, J.

Nsr

W.P.(MD).No.1093 of 2013

24.01.2023