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W.P.No.3316 of 20--

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.3316 of 2019
and WMP.No.3592 of 2019 and WMP.No.13874 of 2020

M.Rajendran

... Petitioner

Vs.

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai 600 009.
2. The Director of Public Health and Preventive Medicine,
DMS Campus, Teynampet, Chennai 600 006.
3. The Block Medical Officer,
Primary Health Centre,
Nangavalli, Salem District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records connected with the Government Letter issued in Letter No.14094/L1/2018-3 dated 25.10.2018 passed by the 1st respondent and proceedings issued in Na.Ka.No.726/A1/2019 dated 18.01.2019 passed by the third respondent and quash the same and consequently direct the respondents to allow the petitioner to draw his salary as per the orders of the Government issued in GO.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009.



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For Petitioner : Mr.S.Ilamvaludhi
For Respondents : Mr.K.Tippu Sulthan

ORDER

This petition has been filed to quash the Government Letter No.14094/L1/2018-3 dated 25.10.2018 passed by the 1st respondent and the proceedings in Na.Ka.No.726/A1/2019 dated 18.01.2019 passed by the third respondent and consequently direct the respondents to allow the petitioner to draw his salary as per the orders of the Government issued in GO.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009.

2. The brief facts that are necessary for disposal of the case are as follows:

i) The petitioner joined the Tamil Nadu Public Health Subordinate Service as Laboratory Assistant on 20.01.1992 and he completed the period of probation on 19.01.1994 and his services have been regularized in the post of Laboratory Assistant with effect from 20.01.1992. On completion of 10 years of regular service in the post of Laboratory Assistant, he was moved to Selection Grade in the post of Laboratory Assistant with effect



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from 20.01.2002 in the scale of pay of Rs.4000-100-6000 as per G.O.(Ms).No.68, Personnel and Administrative Reforms Department, dated 23.01.1986. On completion of 6 months Multipurpose Health Supervisor Training, the petitioner was promoted as Multipurpose Health Supervisor on 15.01.2009.

ii) The ordinary grade and selection grade in pre-revised scale of pay for the post of Laboratory Assistant was Rs.3050-4590 and Rs.4000-100-6000 respectively. As per the Tamil Nadu revised Scales of pay Rules 2009, the Ordinary Scale of pay for the aforesaid post of Laboratory Assistant was revised to Rs.5200-20200 + GP 1900. Further, it was revised as per One Man Commission vide G.O.(Ms).No.63, Finance (PC) Department, dated 26.02.2011 as Rs.5200-20200 + GP 2400 notionally from 01.01.2006 with monetary benefit from 01.03.2011. Consequent on the revision of Ordinary Grade Scale of pay of Lab Assistant, the revised Selection Grade scale of pay is fixed as Rs.9300-34800 + GP 4200 notionally with effect from 01.01.2006 with monetary benefit from 01.08.2010 as per Government Letter No.63305/Service (PC)/2010-1, dated 08.11.2010.



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iii) Since the petitioner herein had already moved to selection grade in the post of Laboratory Assistant on 20.01.2002 i.e. prior to 01.01.2006 and drawing pay of Rs.4300+168 (PP) in the pre-revised scale of pay of Selection Grade Laboratory Assistant, his pay should have been fixed in the corresponding scale of pay in the revised scale of Rs.9300-34800 + grade pay Rs.4200. But the pay of the petitioner herein was fixed at Rs.9870+4200=14070 in the revised scale of pay of Rs.9300-34800 + grade pay of Rs.4200, by allowing the bunching effect (one bunching: one increment for two stages) as was in the additional fitment table issued vide Government Letter No.51082/Finance (Pay Cell) Department, dated 15.09.2010, which is not eligible. It is applicable only to the posts whose ordinary grade scale of pay has been revised from one Pay Band to another Pay Band.

iv) The fixation of pay of the petitioner herein was revised, by cancelling the pay fixation already made with effect from 01.01.2006 as per the clarifications issued in Government Letter No.14094/L1/2018-3, Health and Family Welfare (L1) Department, dated 25.10.2018 and the excess



amount of pay and allowances drawn and paid works out to Rs.1,51,810/-.

The said amount was ordered to be remitted into Government account as per proceedings Na.Ka.No.726/A1/2019 dated 18.01.2019 of the Block Medical Officer, Government Primary Health Centre, Nangavalli. Challenging the said recovery order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submits that the Supreme Court held that recovery should not be made against the Government servant unless it is misappropriation, wrong information given to the Government by the government servant, event it is excess payment if it is not a fault on the government servant, it should not be recovered.

4. In support of his contention, learned counsel for the petitioner relied on the judgment of Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 344***. The relevant portion of the said judgment reads as follows:

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in



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excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

5. The learned Government Advocate appearing for the respondents basing on the averments made in the counter affidavit submits that whenever pay fixation is made, there will be a condition that consequent of fixation of pay, if any excess payment is found at a latter date, such excess



amount will be recovered from the Government Servant concerned. As such the Government has every right to recover the excess payment made to the petitioner by way of wrong fixation of pay and accordingly, sought to dismiss the Writ Petition.

6. Heard the learned counsel appearing for both sides and carefully perused the materials available on record.

7. Admittedly, in the present case, the petitioner is a Group-C employee. As per the judgment of the Apex Court in **White Washer** case as stated supra, recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) would be impermissible in law. The said judgment clearly applicable to the petitioner's case.

8. In view of the above, by following the judgment of the Supreme Court stated supra, this Writ Petition is allowed with the following directions:

- i) The proceedings impugned in this writ petition are hereby set aside.
- ii) The respondents are directed to refund the amount if any recovered



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from the petitioner within a period of four weeks from the date of receipt of
a copy of this order.

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No costs.

Consequently, connected miscellaneous petitions are closed.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs



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