



W.P. No.18603 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.18603 of 2015

and

M.P.No.2 of 2015

Krishna Jothi

Vs.

... Petitioner

- 1.The Secretary
Government of Tamilnadu
Public Welfare Department,
Fort St.George, Chennai – 600 009.
- 2.The Director,
Directorate of Medical and Rural
Health Services (ESI)
Sterling Road, Nungambakkam
Chennai – 600 034.
- 3.The Accounts Officer,
Office of the Accountant General
(Accounts & Entitlement)
Teynampet, Chennai – 18.
- 4.The Regional Administrative Medical Officer,
Employees State Insurance,
K.K. Nagar, Madurai
- 5.The Drawing and Disbursing Officer,

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Medical Officer (in-charge)
ESI Dispensary, Rajapalayam,
Virudhunagar District.

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6.The Medical Officer, (in-charge)
ESI Dispensary, Chinnampalayam
Coimbatore District – 641 062.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 6th respondent dated 13.11.2014 and the consequential order of the 6th respondent dated 13.11.2014 and quash the same and further directing the 6th respondent to pay back the amount recovered from the petitioner with interest.

For Petitioner : Mr.A.R.Karthik Lakshmanan
For R1, R2 & R6 : Mr.K.Tippu Sultan
Government Advocate
For R3 : Mr.V.Murali

ORDER

Through the impugned proceedings, an amount of Rs.34,163/- is sought to be recovered on the ground that the petitioner was granted an increment erroneously by the respondents, as a consequence of re-fixation of his pay, withdrawing the increment pursuant to an objection raised by the audit.

2. When the matter is taken up for consideration, it is noticed that



the petitioner is a Group C category employee and the recovery of the amount from the petitioner on the ground of erroneous fixation of pay or erroneous granting of increments is not permissible in the light of law laid down by the Hon'ble Apex Court in the case of ***State of Punjab Vs. Rafiq Mashfi (White Washer)*** reported in (2015) 4 SCC 334 wherein the Hon'ble Apex Court held as under:

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

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service)

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”

3. In view of the admitted fact that the petitioner is a Group C category employee, the petitioner is covered by clause 1 of para 18 of the said decision. In the circumstances, the recovery ordered by the respondents through the impugned order cannot be sustained and accordingly, the impugned order is quashed. Consequently, the respondents are directed to refund the amounts, if any, recovered from the petitioner pursuant to the impugned order, as expeditiously as possible, at any rate, within a period of six (6) weeks from the date of receipt of a copy of this order.

4. Accordingly, this writ petition is allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

18.11.2024

Index : Yes/No
Speaking Order : Yes/No
dpa



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MUMMINENI SUDHEER KUMAR,J.

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