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W.P.No.8801 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.8801 of 2024

and

W.MP.No.9799 of 2024

A.Baskaran

..

Petitioner

Vs.

1. The Deputy Director of Health Services,
Office of the Health Services,
Tiruvannamalai District.

2.The Block Medical Officer,
Government Block Primary Health Centre,
Melpallipattu,
Tiruvannamalai District 606 903.

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a WRIT OF CERTIORARIFIED MANDAMUS, of calling for the concerned records relating to the order No.R.No.626/A2/2023 dated 12.01.2024, passed by the 2nd respondent and quash the same and to direct the 2nd respondent further to grant the annual increment for the past 2 years



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and consequently to send the pension proposals with the sanction of the annual increments and with the pay which is being drawn as on date.

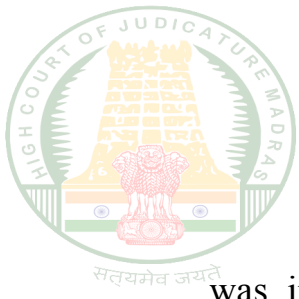
For the Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.M. Bindran, AGP

ORDER

This Writ Petition is challenging the impugned order dated 12.01.2024.

2. The case of the writ petitioner is that the petitioner worked as a Block Health Supervisor and he retired from the service upon superannuation with effect from 30.04.2024. When his pension proposal was submitted for fixation of pension, at that point in time it was noticed that there was an error in fixation of his pay with effect from 01.04.2006 and accordingly, his pay fixation was corrected and his pay was fixed at Rs.61,700/-. Besides that, the excess payment was also calculated, and he



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was instructed to remit a sum of Rs.5,39,577/-. In respect thereof, the petitioner is said to have given a letter agreeing that the amount can be recovered in installments from his pension. The petitioner submits that even assuming that the pay fixation was done erroneously, the same cannot now be recovered on the verge of retirement from the petitioner.

3. The respondents have filed counter resisting the Writ Petition. It is their specific case that the fixation was done erroneously and the correction was made in the due presence of the petitioner. While sanctioning the pension proposal, the petitioner has categorically given an undertaking that the said excess amount can be recovered from his pension on a monthly basis. Therefore, he cannot now turn around and file this Writ Petition.

4. Heard Mr.M.Gnanasekar, learned counsel for the petitioner and Mr. M.Bindran, learned Additional Government Pleader for the respondents, who respectively, reiterated the submissions contained in the affidavit filed in support of the Writ Petition as well as the counter affidavit.



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5. I considered the rival submissions made on either side and persuade the materials available on record.

6. On perusal of the impugned order, it can be seen that the error in pay fixation is said to have happened while granting the benefit of revision of pay with effect from 01.04.2006. Therefore, the same is beyond the period of 5 years. Secondly, it is also done while considering the pension proposal on the verge of retirement for the petitioner. In that view of the matter, the respondents will be fully entitled to correct the mistake and revise the pay of the petitioner to Rs.61,700/-. As far as the recovery of excess payment is concerned, the same cannot be done, and the same is squarely covered by paragraph 12 of the judgment of the Hon'ble Supreme Court in **State of Punjab Vs. Rafiq Masih (White Washer)** [reported in *(2015) 4 SCC 334*] .

7. The learned Additional Government Pleader would vehemently contend that when the petitioner has given a specific undertaking, he cannot



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take advantage of the pronouncement of the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih case*** (*cited supra*).

8. The said argument of the learned Additional Government Pleader cannot be accepted. When the law has been laid down by the Hon'ble Supreme Court of India that the recovery in such instances where the excess payment is made on any erroneous representation made by the petitioner, but by the error committed by the respondents themselves, and when the recovery is sought to be made belatedly and that too on the verge of retirement, the mere undertaking given by the petitioner in the anxiety to get his retirement benefits sanctioned and the pension proposal approved can not be put against him, and therefore, this Writ Petition deserves to be allowed.

9. Accordingly, , this Writ Petition is allowed on the following terms:

- (i) The impugned order dated 12.01.2024 refixing the pay and the consequential orders are upheld only to the limited



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extent where it revised the pay and fixes the last drawn pay at Rs. 61,700/- and are held to be illegal and quashed in as much as it instructs to remit a sum of Rs. 5,39,577/- by the petitioner and no recovery of the said sum can be made.

(ii) No costs. Consequently, the connected miscellaneous petition is also closed.

05.06.2024

Index : Yes
Neutral Citation : Yes
Speaking

jrs



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To

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The matter is listed under the caption “for being mentioned”.

2. When the matter came up for hearing, the learned counsel appearing on behalf of the petitioner brought to the notice of this Court that in the original order dated 05.06.2024, in paragraph No. 2 instead of mentioning the amount as Rs.71,600/- it is wrongly mentioned as Rs.61,700/-.

3. Accordingly, the amount of Rs.61,700/- shall be replaced with **“Rs.71,600/-”**

4. The Registry is directed to issue a fresh order copy by carrying out the said correction.

03.04.2025

ns1



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