IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

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THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

W.P.No.19518 of 2020
and
W.M.P. No. 24131 of 2020

K.Sumathi ... Petitioner

Vs.

1. The State Government of Tamil Nadu,
   Represented by its Secretary to Government,
   Health and Family Welfare Department,
   Secretariat, Fort St. George,
   Chennai – 600 006.

2. The Additional Chief Secretary to Government,
   Finance Department,
   Secretariat, Fort St. George,
   Chennai – 600 006.

3. The Director,
   Directorate of Medical and Rural Health Services,
   Tenampet, Chennai – 600 006.

4. The Medical Officer,
   Government Hospital Chetpet,
   Tiruvannamalai District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings in Na. Ka. No. 789/Ni/2020, dated 23.10.2020 issued by the fourth respondent and quash the same.

For Petitioner	: Mr.B.Sanjay Balachandar for Mr. AL.Kannan
For Respondents	: Mr. E.Sundaram, Government Advocate

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ORDER

This Writ Petition has been filed challenging the order in Na. Ka. No. 789/Ni/2020, dated 23.10.2020, passed by the fourth respondent.

2. The learned counsel for the petitioner would submit that she was given a posting order on 10.07.2009 for the post of Steno Typist Grade-III, and she joined the service of the Health and Family Welfare Department. The learned counsel for the petitioner would further submit that for the Steno Typist Grade-III, a fitment was made as per G.O. Ms. No. 234, Finance (Pay Cell) Department, dated 01.06.2009, and G.O. Ms. No. 258, Finance (Pay

Cell) Department, dated 23.06.2009. In the meantime, the petitioner and similarly placed persons requested the respondents to extend the benefits of G.O. Ms. No. 340, Finance (Pay Cell) Department, dated 26.08.2010, vide a letter dated 18.07.2018. The respondents, after obtaining clarification from the appropriate authorities, extended the benefits of G.O. Ms. No. 340, Finance (Pay Cell) Department, dated 26.08.2010, vide proceedings dated 20.12.2018. However, without issuing any notice, the fourth respondent suddenly issued the impugned recovery order dated 23.10.2020. It is the contention of the learned counsel for the petitioner that the recovery order would be arbitrary, and there was no misrepresentation on his part. Furthermore, the recovery has been ordered after a period of five years. Therefore, he would contend that the recovery is liable to be quashed.

3. Per contra, the learned Government Advocate appearing for the respondents vehemently objected to the contention of the learned counsel for the petitioner and submitted that the recovery was effected only based on the proceedings issued by the Government. The learned Government Advocate appearing for the respondents further contended that persons directly appointed through TNPSC recruitment are not entitled to fitment of pay at a

1.86 ratio, as stipulated under G.O. Ms. No. 340, Finance (Pay Cell) Department, dated 26.08.2010. Therefore, it is the contention of the learned Government Advocate that the excess pay paid beyond the petitioner's entitlement, is liable to be recovered. Hence, he would contend that there is no merit in the instant Writ Petition, and prayed to dismiss the same.

4. I have given anxious consideration to the submissions made on either side.

5. It is an admitted case of the petitioner that only on her request and representation, the respondent fixed the pay as per G.O. Ms. No. 340, Finance (Pay Cell) Department, dated 26.08.2010. It is also relevant to refer here that, in pursuance of the representation made by the petitioner, it appears that the respondent sought clarification from TNPSC regarding the date of appointment. Only after getting clarification, the Government fixed the pay as per G.O. Ms. No. 340, Finance (Pay Cell) Department, dated 26.08.2010, with effect from 03.09.2009.

6. Though the learned Government Advocate appearing for the

respondents strongly objected, he was not in a position to place any material before this Court in respect of the misrepresentation allegedly made by the petitioner, except submitting an application to fix the pay as provided under G.O. Ms. No. 340, Finance (Pay Cell) Department, dated 26.08.2010. From the records, it appears that the excess pay has been paid since 03.09.2009 till 30.09.2020, a period spanning almost more than five years.

7. At this juncture, the learned counsel for the petitioner would rely upon the judgement of the Hon'ble Supreme Court of India in ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** [(2015) 4 SCC 334]. The relevant paragraph is paragraph 18, which 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 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.

8. The learned counsel for the petitioner would also rely upon the orders of the Madurai Bench of this Court in ***W.P. (MD) Nos.19356 of 2019 etc., batch, W.P. (MD) Nos. 15375 of 2013 etc., batch and W.P. (MD) Nos. 22133 and 22136 of 2019*** dated 06.09.2019, 03.10.2019 and 21.10.2019 respectively in support of this case.

9. As per the above ratio, it has been clearly stipulated that whenever any recovery is made beyond the period of five years, and that too when there was no misrepresentation on the part of the petitioner, then such recovery cannot be effected against the individual, as the same would cause an inequitous and harsh effect upon them. Therefore, as rightly contended by the learned counsel for the petitioner, the issuance of the impugned notice for recovery is arbitrary and liable to be quashed. However, it is made clear that the fitment made by the respondents in respect of the pay of the petitioner is confirmed.

10. In the result, this Writ Petition is partly allowed, only to the extent of quashing the recovery order made against the petitioner in respect of the fitment. However, the order of the authority confirming the fitment is confirmed. Consequently, the connected Miscellaneous Petition is closed. No costs.

17.10.2024
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Index : Yes/No
Speaking order /Non Speaking Order
Neutral Citation : Yes/No

To

1. The Secretary to Government,
   The State Government of Tamil Nadu,
   Health and Family Welfare Department,
   Secretariat, Fort St. George,
   Chennai – 600 006.

2. The Additional Chief Secretary to Government,
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3. The Director,
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4. The Medical Officer,
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C.KUMARAPPAN, J.

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