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W.P.No.27155 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.27155 of 2021
and W.M.P.No.28647 of 2021

D.Balasubramaniam

... Petitioner

Vs.

1.The Director,
Public Health and Preventive Medicine Department,
Chennai 600 006.

2.The Deputy Director of Health Services,
Perambalur.

3.The Block Medical Officer,
Government Primary Health Centre,
Kolakkanatham Block,
Alathur Taluk, Perambalur District.

4.The Accountant General (Accounts & Entitlements),
Tamil Nadu, No.361, Anna Salai,
Teynampet, Chennai 600 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent herein in Na.Ka.No.256/PHC/2021 dated .09.2021 (signed on 21.09.2021) and quash the same and to direct the respondents herein to disburse the entire retirement and pensionary benefits without any



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deduction or recovery within a limited time frame as fixed by this Court.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.K.Tippu Sulthan, GA for R1 to R3
M/s.J.Sreevidhya for R4

ORDER

This Writ Petition has been filed for quashment of the proceedings of the first respondent herein in Na.Ka.No.256/PHC/2021 dated 21.09.2021 and consequently, to direct the respondents to disburse the entire retirement and pensionary benefits without any deduction or recovery within a limited time frame as fixed by this Court.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The learned counsel for the petitioner submitted that when the petitioner was serving as Non Medical Supervisor in Public Health Department at the office of the third respondent, had applied for voluntary retirement owing to his personal constraints and the same was accepted and he voluntarily retired from service on 09.05.2021 A.N. By the proceedings of the third respondent in Na.Ka.No.256/PHC/2021 dated 21.09.2021, it was informed to the petitioner that on re-designation of the post of Health



Inspector 1B to Health Inspector Grade I, the pay fixation was done erroneously and he has been directed to remit an amount of Rs.4,07,329/- to the Government Account or to inform as to whether the said amount could be deducted from his gratuity.

4. He further submitted that the Hon'ble Supreme Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***, has held that recovery of any excess payment made, owing to the mistake of the Department for over a period of 5 years, cannot be made. The aforesaid decision of the Hon'ble Supreme Court has been followed in the Government Order in G.O.Ms.No.286, Finance (Pension) Department dated 28.08.2018, which bars any recovery from retired employees or recovery from any employee, the excess payment has been made for a period in excess of five years before the order of recovery is issued.

5. The learned Government Advocate appearing for the respondents 1 to 3 submitted that as per G.O.Ms.No.110/Health and Family Welfare Department, dated 06.05.2014, 5% PP has to be merged in the pre-revised scale of Leprosy Inspector and not in the revised scale of Health Inspector Grade I since the post of Health Inspector Grade I does not carry personal



pay. As on 01.01.1998, the annual increment has been fixed at Rs.4800/- and the Selection grade was awarded to the petitioner on 08.03.1998 and the pay has been fixed at Rs.5300/- on 08.03.1998 in the time scale of pay of Rs.5300-150-8300. As per the guidance of the 4th respondent, the pay has been revised and re-fixed from 01.08.1997 to 09.05.2021. The excess paid amount has been calculated as Rs.4,7,329/-. In this regard, the petitioner has been informed vide letter R.No.256/PHC/2021, dated 21.09.2021 that whether the excess paid amount may be remitted to the Government Account by challan or may be recovered from the DCRG of the petitioner. Till date, no recovery has been implemented. The petitioner was working as Non-Medical Supervisor which comes under the category of Group B. The recovery from employees belonging to Group B Officer is permissible in rule and as per the guidance of the 4th respondent, the fixation has been revised and the same is proper. Therefore, there is no infirmity in the impugned order passed by the first respondent.

6. In view of the submissions made by the learned counsel on either side and in the light of the judgment of the Hon'ble Supreme Court in the case of *State of Punjab vs. Rafiq Masih (White Washer)* as stated supra, this Court finds that the recovery of any excess payment made, owing to the



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mistake of the Department for over a period of 5 years, cannot be made.

Since the respondents have sought to make recovery from 01.08.1997 to 09.05.2021, the same is impermissible in law. Hence, this Court directs the respondents to pay the amount, if any recovered from the petitioner. The respondents are also directed to make all the payments due to the petitioner as per law, within a period of four weeks from the date of receipt of a copy of this order.

7. With the above observations and directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition, if any, is closed.

25.10.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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VIVEK KUMAR SINGH, J.

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