



W.P.(MD).No.15303 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.15303 of 2024

and

W.M.P.(MD).Nos.13416 and 13417 of 2024

P.Titus Fernando

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai 6.

2. The Director,
Public Health and Preventive Medicine Department,
DMS Complex,
Teynampet, Chennai 6.

3. The Director of Medical Education,
Directorate of Medical Education,
Chennai 10.

4. The Accountant General (A And E),
361, Anna Salai,
Teynampet, Chennai 18.

5. The Designated Officer,
Tamil Nadu Food Safety and Drug
Administration Department,
(Food Safety Wing),
Thoothukudi 628 101.

... Respondents



W.P.(MD).No.15303 of 2024

WEB COPY

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by 4th respondent No. No. P14/1/11422574/ADK dated 24.04.2024 and the consequential recovery order issued by the 5th respondent proceedings vide No. 141/A1/2024 dated 16.05.2024 and further all consequential order and to quash the same and consequently directing the respondents to restore the scale of pay of the petitioner with salary benefits from the date of initial appointment.

For Petitioner : Mr. F.Deepak

For Respondents : Mr.J.Ashok (R1 to R3, R5)
Additional Government Pleader

Mr.G.Karthik (R4)

ORDER

Heard Mr.F.Deepak, learned counsel for the petitioner, Mr.J.Ashok, learned Additional Government Pleader, for the respondents 1 to 3 & 5 and Mr.G.Karthik, learned counsel for the respondent No.4.

2.This Writ Petition has been filed challenging the impugned order issued by 4th respondent No. No. P14/1/11422574/ADK, dated 24.04.2024 and the consequential recovery order issued by the 5th respondent proceedings vide



W.P.(MD).No.15303 of 2024

No. 141/A1/2024 dated 16.05.2024 and consequently to direct the respondents to restore the scale of pay of the petitioner with salary benefits from the date of initial appointment.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4. The learned counsel for the petitioner submitted that the impugned order has been passed on 24.04.2024, even without putting the petitioner on notice. The impugned order has been issued on the ground of wrong fixation of pay. As per the decision in ***State of Punjab and others etc. Vs Rafiq Masih (White Washer) etc.***, as far as the persons, who relieved from services is concerned no recovery can be made against them. The petitioner has retired on 31.05.2024.

5. As per the dictum laid down by the Hon'ble Apex Court in ***State of Punjab and others vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696***. In which, the Hon'ble Apex Court has laid down the guidelines for recovery in the following manner:-



W.P.(MD).No.15303 of 2024

- (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.”*

6. So far as the recovery is concerned, as the petitioner comes under Clause (ii) of the above category, it is impermissible. However, the pay can be refixed once it comes to the knowledge of the respondents that it is wrongly fixed.



W.P.(MD).No.15303 of 2024

WEB COPY

7.However, that exercise cannot be done without putting the petitioner on notice. The impugned order itself can be considered as notice and the petitioner shall submit his explanation in this regard, within a period of two weeks from the date of receipt of copy of this order. The 4th respondent is required to pass orders, only after receiving the explanation from the petitioner within a period of three weeks, thereafter.

8.With the above directions, this writ petition stands disposed of.
No costs. Consequently, connected miscellaneous petitions are closed.

10.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM



W.P.(MD).No.15303 of 2024

To

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W.P.(MD).No.15303 of 2024

R.N.MANJULA, J.

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ORDER IN
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10.07.2024