



WP(MD) No.16117 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.16117 of 2024

and

W.M.P(MD)Nos.14007 & 14008 of 2024

K.Sudalaimani

... Petitioner

Vs.

1.The Principal Accountant General of Tamil Nadu (A & E),
Office of the Principal Accountant General (A & E),
361, Anna Salai,
Chennai - 600 018.

2.The District Health Officer,
District Primary Health Centre,
Karur.

3. The Block Medical Officer,
Government Community Health Centre,
Thogaimalai,
Karur District.

... Respondents



WP(MD) No.16117 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, to call for the records relating to the impugned order passed by the third respondent in his proceedings Nil dated Nil and the impugned order passed by the second respondent in his proceedings Na.Ka.No. 2152/Ka4/2023 dated 04.04.2024 in respect of the alleged recovery of excess payment due to wrongful fixation of pay increment for the period from 01.10.2012 to 30.06.2023 amounting to Rs.7,87,295/- and quash the same as illegal, arbitrary and in violation of principles of Natural Justice and consequently directing the third respondent to refund the sum of Rs.7,87,295/- with interest at the rate of 12% per annum to the petitioner within a time frame fixed by this Court.

For Petitioner : Ms.P.Sre Swedha
for M/s.B.Saravanan Associates
For Respondents : Mr.P.Gunasekaran – for R1
Standing Counsel
Mr.S.Shanmugavel – for R2 & R3
Additional Government Pleader



WEB COPY



WP(MD) No.16117 of 2024

ORDER

Heard Ms.P.Sre Swedha, learned counsel appearing for the petitioner, Mr.P.Gunasekaran, learned standing counsel appearing for the first respondent and Mr..S.Shanmugavel, learned Additional Government Pleader appearing for the respondents 2 and 3.

2. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

3. The petitioner has filed this writ petition challenging the recovery order of the 2nd respondent dated 04.04.2024 and consequently to direct the third respondent to refund the sum of Rs.7,87,295/- with interest at the rate of 12% per annum to the petitioner

4. In the impugned order, it is seen that the recovery order has been issued for a sum of Rs.7,87,295/- by alleging that the excess payment has been made to the petitioner from the year 2012 due to wrong fixation of his pay. The petitioner, who had been working as



WP(MD) No.16117 of 2024

Block Health Supervisor and retired from service after attaining the age of superannuation on 30.06.2023. But only subsequent to the retirement, the proceedings have been issued by the third respondent stating that excess payments have been made to the petitioner and it is liable to be recovered. In the recovery order, the objections raised by the first respondent has been shown.

5. The learned counsel for the petitioner submitted that such recovery is impermissible in view of the dictum laid down by the Supreme Court in *State of Punjab and others vs. Rafiq Masih (White Washer)* reported in *AIR 2015 SC 696*. It is submitted that recovery has been made after a period of five years and that too, subsequent to his retirement.

6. Mr.P.Gunasekaran, learned standing counsel for the first respondent submitted that the petitioner had given an undertaking in the year 2023 itself to the third respondent that the excess payment of Rs.7,87,295/- can be deducted from his DCRG and hence, he cannot now turn around and make objections.



WP(MD) No.16117 of 2024

WEB COPY

7.The above submission was endorsed by the learned Additional Government Pleader appearing for the respondents 2 and 3 as well.

8. The learned counsel for the petitioner submitted that the petitioner's undertaking cannot be considered as a voluntary undertaking and he was under pressurized circumstances, as his terminal benefits needs to be settled at the relevant point of time.

9. Even though it is alleged by the respondent that excess payment has been made to the petitioner, no action to recover the excess payment has been made until the petitioner retired from service. Only after the pension proposal of the petitioner has been sent to the first respondent, the first respondent has raised an objection stating about the wrong pay fixation from the year 2012 onwards. Though it is huge monetary loss to the tune of Rs.7,87,295/-, before withholding the above said amount from the petitioner's DCRG, he has not been given with any notice. Much significance has been attached to the alleged



WP(MD) No.16117 of 2024

undertaking given by the petitioner for agreeing to withhold the said amount in the DCRG. The petitioner retired from service and if his terminal benefits are not paid and the petitioner would be no doubt in compelling circumstances and that could have forced him to give the undertaking.

10. Had the petitioner got the legal advice and given with the notice in respect of the excess payment, it would have been possible for him to get due advice and then respond to the respondents. So the coercive circumstances under which the petitioner had executed the undertaking is quite understandable.

11. With regard to recovery of excess payment due to wrong fixation of pay, the Hon'ble Supreme Court has well settled the legal position in *State of Punjab and others vs. Rafiq Masih (White Washer)* reported in *AIR 2015 SC 696*. In the said order, the Supreme Court has held as under :

“12. It is not possible to postulate all situations of hardship, which would govern employees on the



WP(MD) No.16117 of 2024

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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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



WEB COPY



WP(MD) No.16117 of 2024

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."

13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

14. The appeals are disposed of in the above terms."

12. At this juncture, the learned Additional Government Pleader for the respondents 2 and 3 submitted that in **High Court of Punjab and Others Vs. Jagdev Singh**, reported in **AIR 2016 Supreme Court 3523**, in which the Hon'ble Supreme Court has held that if any persons give an undertaking he is bound by the undertaking and hence, he cannot seek any exemption from recovery.



WP(MD) No.16117 of 2024

WEB COPY

13. But the above observation of the Supreme Court has to be seen on case to case basis by appreciating the whole circumstances and how the undertaking came to be executed by an individual. So the above judgment does not dilute the principle that the iniquitous and harsh or arbitrary nature of the recovery which would outweigh the equitable balance of the employees right to recover.

14. In the case on hand, the petitioner is in no way responsible for the alleged excess payment. The excess payment did not occur due to any suppression of facts by the petitioner. Even when the objections have not been raised at any point of time during the service of the petitioner, the objections with regard to the excess payment has been first made subsequent to his retirement and only at the point when the pension proposal has been sent. Even though the total amount liable to be recovered, is a hefty sum of Rs.7,87,295/-, the petitioner has not been given with any previous notice to defend about the objections.

15. Any Government servant who has rendered long services could have an legitimate and with an expectation that after



WP(MD) No.16117 of 2024

WEB COPY

retirement, the DCRG will be paid to him without any deduction and that can be well utilized for his family settlement or to meet out any major expenses. A strong blow given by the respondents at that time for recovery of a heavy sum of Rs.7,87,295/- would in every aspect outweigh the other consideration in favour of the employer. Hence, it is no doubt an iniquitous harsh and arbitrary action. If for any reasons, the first respondent finds it fit the pay of the petitioner has been wrongly fixed, it can be re-fixed by putting the petitioner on notice. So far as the recovery is concerned, it is impermissible, in view of the above stated reasons.

16. In view of the above stated reasons, the writ petition is allowed by setting aside the order of recovery dated 04.04.2024 of the first respondent and the respondents are directed to repay a sum of Rs.7,87,295/- (Rupees Seven Lakhs Eighty Seven Thousand Two Hundred and Ninety Five only) which was withheld from the DCRG of the petitioner within a period of three weeks from the date of receipt of a copy of this order. However, the third respondent is at liberty to give a show cause notice to the petitioner with regard to re-fixation of the



WP(MD) No.16117 of 2024

petitioner's pay by pointing out the reasons to do the said exercise and after giving an opportunity to the petitioner to make his objections to any order as to re-fixation of the pay which might have the impact on the pension. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.07.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM



WP(MD) No.16117 of 2024

To
WEB COPY

1.The Principal Accountant General of Tamil Nadu (A & E),
Office of the Principal Accountant General (A & E),
361, Anna Salai,
Chennai - 600 018.

2.The District Health Officer,
District Primary Health Centre,
Karur.

3. The Block Medical Officer,
Government Community Health Centre,
Thogaimalai,
Karur District.



WEB COPY



WP(MD) No.16117 of 2024

R.N.MANJULA, J.

RM

Order made in
W.P.(MD)No.16117 of 2024

19.07.2024