



W.P.(MD)No.17615 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.17615 of 2024

and

W.M.P.(MD)Nos.15128 and 15129 of 2024

R.Raju

... 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,
Director of Medical Education,
Chennai-10.
- 4.The Accountant General (A&E),
361, Anna Salai,
Teynampet,
Chennai-18.
- 5.The District Health Officer,
District Public Health Office,
Perambalur.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the fourth respondent in P08/2/1828907/ADK dated 10.05.2024 and the consequential recovery order issued by the fifth respondent proceedings vide No.Na.Ka.No.466/A1/2024 dated 21.06.2024 and further all consequential order and to quash the same and consequently direct the respondents to restore the scale of pay of the petitioner with salary benefits from the date of initial appointment.

For Petitioner : Mr.P.Deepak
For R1 to R3 & R5: Mr.S.Shanmugavel
Additional Government Pleader
For R4 : Ms.S.Mahalakshmi
Standing Counsel

ORDER

Heard Mr.P.Deepak, learned counsel appearing for the petitioner, Mr.S.Shanmugavel, learned Additional Government Pleader for the respondents 1 to 3 and 5 and Ms.S.Mahalakshmi, learned Standing Counsel appearing for the fourth respondent.

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

3.The petitioner has filed this writ petition challenging the order dated 10.05.2024, through which, the fourth respondent requested the fifth



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respondent to withhold a sum of Rs.4,43,837/- from the death cum retirement benefits payable to the petitioner and the consequential recovery order dated 21.06.2024 and for a direction to the respondent to restore the scale of pay of the petitioner with salary benefits.

4.The learned counsel for the petitioner submitted that the petitioner was working as a Block Medical Officer and retired from service on 29.04.2024. When petitioner's pension proposal was sent by the fifth respondent to the fourth respondent, the fourth respondent has refixed the salary of the petitioner stating that 5% of personal pay is applicable only for pre-revised scale of pay and the petitioner is not entitled to get the same. As an offshoot of the above order, the fifth respondent had calculated the excess payment made to the petitioner to the tune of Rs.4,43,837/- and sent a communication to the fourth respondent to withhold the same.

5.He further submitted that the order of recovery has been passed without providing a reasonable opportunity of hearing to the petitioner and after a period of 26 years from the date of grant of salary. Hence, he seeks to allow this writ petition.



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6.The learned Additional Government Pleader appearing for the respondents submitted that the impugned proceedings can be considered as notice and the petitioner can be allowed to make his submissions.

7.So far as the recovery element is concerned, the same has been issued without even putting the petitioner on notice. The petitioner cannot suffer with recovery for the inadvertent payment made by the respondents. The petitioner is no way responsible for fixation of excess pay. The petitioner's case is squarely covered under the decision of the Hon'ble Supreme Court in the case of *State of Punjab and Others Vs. Rafiq Masih (White Washer) and others* reported in **2015 (4) SCC 334**, wherein recoveries by the employers, would be impermissible in law and the relevant portion reads as follows:

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii)

(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.”

8.The petitioner was serving as a Block Medical Officer at the time of his retirement and he would fall under Group-C category of the employees



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and the recovery is sought to be made after five years. The petitioner has not suppressed any material facts in order to induce the fifth respondent to make excess payment to him. Hence, the recovery would fall under clauses (i) and (iii) of the impermissible recovery listed down in the '**White Washer's**' case cited supra. Since the recovery is impermissible in law as per the above decision, the fourth and fifth respondent shall not withhold any amount as found in the order dated 21.06.2024 towards recovery and is liable to be set aside.

9. Insofar as the re-fixation of pay of the petitioner on the ground that the pay has been wrongly fixed and it will reflect upon the pension, is concerned, the re-fixation order has been given without putting the petitioner on notice and hence, the same is also liable to be set aside.

10. In view of the same, this writ petition is allowed and the order of recovery dated 21.06.2024 and the order of re-fixation of pay dated 10.05.2024 are hereby set aside. The fourth respondent is directed to issue notice to the petitioner with regard to the issue of re-fixation of pay within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the petitioner is at liberty to make his submission by raising all his contentions within a period of two weeks therefrom. Thereafter, the fourth



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respondent shall pass order with regard to the re-fixation of pay, if any and furnish a copy of the same to the petitioner and the fifth respondent, who after receiving the same, shall settle the retirement benefits of the petitioner forthwith but without any deduction towards the alleged excess payment. No costs. Consequently, connected miscellaneous petitions are closed.

30.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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To

- 1.The 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,
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R.N.MANJULA, J.

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