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W.P.(MD)No.17636 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.17636 of 2024

and

W.M.P.(MD)No.15140 of 2024

J.Keshavamurthy

... 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&E),
361, Anna Salai,
Teyampet,
Chennai-18.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, Certiorarified Mandamus, calling for the records relating to the impugned order issued by 4th respondent No.P08/4/10828204/ADK dated 01.02.2024 and further all consequential order



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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 R1& R2 : Mr.J.Ashok
Additional Government Pleader
For R3 : Mr.T.Amjad Khan
Government Advocate
For R4 : Mr.G.Karthick
Standing Counsel

ORDER

Heard Mr.F.Deepak, learned counsel appearing for the petitioner, Mr.J.Ashok, learned Additional Government Pleader for first and second respondents, Mr.T.Amjad Khan, learned Government Advocate for the third respondent and Mr.G.Karthick, 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 stage of admission itself.

3.The petitioner has filed this writ petition challenging the order dated 01.02.2024, by which the pay of the petitioner has been re-fixed on the finding that excess payment has been paid to the petitioner.



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4.The learned counsel for the petitioner submitted that no recovery can be made against the petitioner on the ground of excess payment has been made that too after several years.

5.Perusal of the impugned order shows that it is only a communication sent to the Deputy Director of Health Services, Trichy, under whom the petitioner was working, to re-present the pension proposal of the petitioner on the ground that excess payment has been made to the petitioner. It is for the second respondent to re-present the proposal either by accepting the objection of the fourth respondent or to give explanation as how the pay fixation already made is correct in respect of the petitioner. The petitioner has rushed to the Court in a premature stage without even waiting to see as to how the second respondent responds to the communication made by the fourth respondent.

6.It is made clear that for any reasons, if the second respondent deems it fit that the pay has to be revised in respect of the petitioner, then the second respondent shall not over look the settled dposition of law in respect of impermissible recovery 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.



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7.The petitioner has not suppressed any material facts in order to induce the employer to make excess payment to him. Hence, if any re-fixation of pay is deemed to be necessarily done, the same shall be done only after issuing a show cause notice to the petitioner to make his submission.

8.In light of the above observations, this writ petition is disposed of with a direction to the employer of the petitioner to resubmit the proposal after deciding the petitioner's pay-fixation as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is 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.



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

4.The Accountant General (A&E),
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R.N.MANJULA, J.

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