



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-04-2025

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THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

WP No. 2293 of 2024

A.L.Raju

S/o.Lakshmana Gounder.

Petitioner(s)

Vs.

1. The Director of Public Health Services
and Preventive Medicine,
D.M.S. Complex, Chennai-006.

2.The Deputy Director of Health Service,
Deputy Director of Public Health Service
Office, Erode.

3.The Branch Officer,
Office of the Accountant General (A & E),
No.361, Anna Salai, Chennai-600 018.

Respondent(s)

PRAYER: This writ petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records in Na.Ka. No.1292/ A3/ 2023, dated 06.11.2023, passed by the 2nd respondent and quash the same and consequently direct the respondents to return the amount of Rs.6,17,486 /- to the petitioner.

For Petitioner(s): Ms.M.Kruthika

For Respondent(s): Mr.E.Sundaram,
Government Advocate, For R1
And R2



Ms.G.Vardinikarthick
Standing Counsel For R3

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ORDER

The writ petition has been filed in the nature of Certiorarified Mandamus seeking records relating to an order dated 06.11.2023, in Na.Ka. No.1292/ A3/ 2023 passed by the second respondent and quash the same and to direct the respondents to return the amount of Rs.6,17,486 /- to the petitioner.

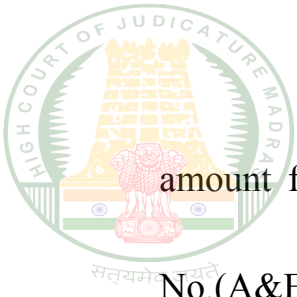
2.In the affidavit filed in support of the writ petition, it had been stated that the petitioner had been initially appointed as Leprosy Inspector under Rule 10(a) (i) under the Tamil Nadu Medical Subordinate Services for a temporary period. Thereafter, his service was regularised from 27.10.1986. He was then promoted as Health Inspector on 01.08.1997 and was also granted Special Grade as Health Inspector Grade I. He was then promoted as Block Health Supervisor on 20.08.2013. He was further promoted as Personal Assistant to the Deputy Director of Health Services on and from 05.11.2015. He retired from service on attaining the age of superannuation on 30.09.2023. The petitioner was then issued with the copy of the Audit Objections from the third



respondent on 07.08.2023. The first recovery order was passed by the second respondent on the ground that excessive salary was paid to the petitioner between 01.08.1997 to 30.09.2023 and this amount was calculated at Rs.4,19,666/-. Thereafter, on 07.11.2023, a second recovery order was passed by the second respondent that excessive salary had been paid to the petitioner during the course of his employment between 01.08.1997 to 30.09.2023 and the said amount was arrived at Rs.6,17,486/-. The writ petition has been filed questioning these orders.

3.The learned counsel for the petitioner pointed out that before effecting recovery, show cause notice as required had not been issued by the respondents.

4.In the counter affidavit filed by the second respondent, it had been asserted that the show cause notice had actually been issued. To verify that particular fact, the records had been examined and it is seen that the first order was passed on 12.09.2023 in Na.Ka.No.1292/A3/2023 and it has been passed without issuing any prior show cause notice. It is an order directing recovery of



amount from the petitioner. The second order was passed on 11.10.2023 in

No.(A&E)/PEN P08/10827882/3/R0827882/449. This again is a recovery

order. There is no reference about any show cause notice have been issued to

the petitioner. It is thus evident that both orders have been passed without

issuing show cause notice. This Court had placed an option for the respondents

to proceed afresh by issuing a show cause notice. However, the learned counsel

for the petitioner widened the scope of arguments by placing reliance on the

judgment of the Supreme Court, in State of Punjab & Others Vs. Rafiq Masih

(White Washer case), AIR 2015 SC 696, wherein, the Hon'ble Supreme Court

has held as follows:

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



WEB COPY

WP No. 2293 of 2024



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 employers right to recover.”

5. The directions of the Hon'ble Supreme Court directly applies to the petitioner herein. He belongs to Group C service. The recovery had been for a period excess of five years and there had been no show cause notice issued and the respondents have not examined the economic hardship or the difficulties



which the petitioner faces owing to the said recovery. For the very same period from between 01.08.1997 to 30.09.2023, two separate orders have been passed recovering a sum of Rs.4,19,666/- and further sum of Rs.6,17,486/. Petitioner should have put on notice about the same. Failing to do so, vitiate both the orders. Both orders are set aside. The writ petition stands allowed. A direction is given to the second respondent to refund the amount recovered from the petitioner herein together with interest at 6% from the date of recovery till the date of actual repayment. No Costs. Consequently, connected miscellaneous petitions, if any, are also closed.

17-04-2025

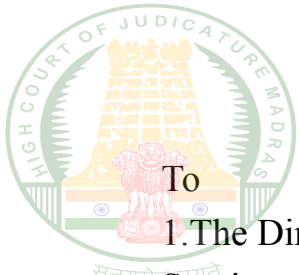
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

1. The Director Of Public Health
Services

And Preventive Medicine, D.M.S.
Complex, Chennai-006.

2. The Deputy Director Of Health
Service

Deputy Director Of Public Health
Service Office, Erode.

3. The Branch Officer

Office Of The Accountant General (a
And E), No.361, Anna Salai,
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WEB COPY

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