



WEB COPY

WP No. 6896 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-03-2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

WP No. 6896 of 2024

Pushparaj

Petitioner

Vs.

1. The Secretary to Government,
Rural Development and Panchayat Raj
Department,
Fort St George, Chennai 9.

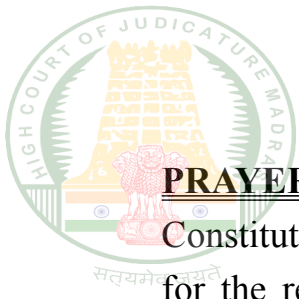
2.The Secretary to Government,
Health and Family Welfare Department,
Fort St George, Chennai 9.

3.The Director of Rural Development
Panagal Building,
Saidapet, Chennai 600 015.

4.The Director of Local Fund Audit,
Combined Accounts Office,
Anbalagan Maaligai,
4th Floor Nandanam,
Chennai 600 035.

5.The Commissioner,
Thirusuzhi Panchayat Union Office,
M.Reddipatti, Virudhunagar District.

Respondents



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 of the 1st respondent in connection with the impugned order passed by him in Letter No. 13826 / PA-5 / 2019-1 dated 25.10.2019 and also the order of recovery issued by the 5th respondent in his letter No. A1 / 1764 / 2018 dated 31.05.2022 and quash the same and direct the respondents to grant the scale of pay of Rs 9300- 40000 - GP 4400 applicable to the Maternity Assistant and also further direct the respondents to reimburse the recovered amount of Rs 5,80,393 /- to the petitioner along with interest @ 12%p.a. within a reasonable time and grant such other further relief.

For Petitioner(s): Mr.K.Venkataramani, Senior Counsel
for Mr.M. Muthappan

For R1 to R4 Mr.M.Shajahan SGP

For R5 Mr.P.Balathandayutham, Spl.G.P.

ORDER

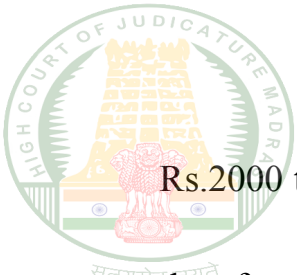
The writ petition has been filed in the nature of Certiorarified Mandamus seeking records relating to the first respondent in connection with the order passed in letter No.13826 / PA-5 / 2019-1, dated 25.10.2019 and also the order of recovery issued by the 5th respondent in his letter No. A1 / 1764 / 2018, dated 31.05.2022 and quash both the aforementioned letters and direct the respondents to grant the scale of pay of Rs.9300 - 40000 - GP 4400 as applicable to the Maternity Assistant and further, direct the respondents to reimburse the recovered amount of Rs.5,80,393 /- to the petitioner along with interest @ 12% per annum within a reasonable time.



WEB COPY

2. The petitioner had been serving as Maternity Assistant (Multispeciality Health Worker Supergrade) at Thirusuzhi Panchayat Union Dispensary, Virudhunagar District. She retired from service after attaining the age of superannuation on 30.06.2018. It is contended by her in her affidavit that her scale of pay had been fixed at Rs.9300 - 40000 - GP 4400 as applicable to the Maternity Assistant in the year 2010. This scale of pay was determined on the basis of the recommendation of the One-Man Commission. By that recommendation, scale of pay of Rs.5200-20200+2400 GP, were revised to Rs.9300- 40000 - GP 4400. It is contended that this particular revision in the pay was not at the instance of the petitioner herein. The petitioner had continued to receive the said pay till her date of retirement. Further, after the date of retirement, on the basis of the last drawn pay, the proposal for pension was forwarded to the respondents.

3. Thereafter, in the year 2019, it had been contended by the respondents that the petitioner had been wrongly granted revision of pay at Rs.9300 - 40000 - GP 4400 and that, she was entitled only for revision of Grade Pay from



Rs.2000 to 2400 and no other revision either in basic or in any other aspect and

therefore, claiming that she had benefited from the revision of pay from

Rs.5200-20200+2400 GP to Rs.9300 - 40000 - GP 4400, the impugned order

had been passed directing recovery of alleged excess amount paid to the

petitioner herein. There also had been a recovery in the first instance of a sum

of Rs.5,80,393/-.

4.It is contended on behalf of the respondents that the petitioner had also given a consent letter, consenting the said deduction to be made and further consenting for revision in the pay. Challenging the orders directing the recovery and also the orders directing the revision of pay and to scale down the pay from Rs.9300- 40000 - GP 4400 to Rs.5200-20200+2400 GP, the writ petition has been filed seeking to quash the aforementioned directions and letters.

5.Heard the learned Senior Counsel for the petitioner and the learned counsel for the respondents.



WEB COPY

6. It is contended by the learned Senior Counsel for the petitioner that the petitioner had initially joined in service on 19.01.1983. After having served as Multispeciality Health Worker (Female), she had registered her name in the Tamil Nadu Nurses & Midwives Council as early as 08.07.1993. She was appointed as Maternity Assistant in Thirusuzhi Panchayat Union Siddha Hospital, by proceedings dated 10.05.1982. It was contended that she was sponsored by the Employment Exchange. There was no promotion avenue available to the said post. The petitioner's pay was however protected by granting Selection Grade, Special Grade and Supertime Grade. Those upgradations would only indicate enhancement in the Grade Pay. Her Grade Pay was enhanced at the last year from Rs.5200-20200+2200 GP to 2400 GP.

7. The learned Senior Counsel pointed out that a One-Man Commission had been appointed to examine whether there could be revision of pay and the One-Man Commission had recommended that the pay of those who are drawing pay in the Pay Band of Rs.5200-20200 + 2400 GP could be revised to Rs.9300 - 40000 - GP 4400. It had been contended that on that basis, the pay of the



petitioner was revised and the petitioner was permitted to draw a higher Grade Pay.

WEB COPY

8.The learned Senior Counsel stated that this particular revision was not on the basis of the representation given by the petitioner, but *suo motu* initiated by the employer, Thirusuzhi Panchayat Union Office. It is contended that the petitioner cannot now be visited with an order of recovery or an order holding that she had been paid excess salary over and above what she was entitled to.

9.The learned Senior Counsel placed reliance on the judgment of the Hon'ble Supreme Court, reported in **(2015) 4 SCC 334, State of Punjab and others v. Rafiq Masih (White Washer)**. The Hon'ble Supreme Court by that particular judgment had laid down guidelines wherein, recovery could be made from public servants, who had retired from service, with specific reference to Group C and D public servants and had held that a recovery order passed after five years would result in economic hardship and therefore, had frowned upon such practice of passing orders recovering of what was alleged to be excessively paid salary. It is also be mentioned that the State had also framed guidelines on



WEB COPY

the basis of the directions given by the Hon'ble Supreme Court. It is thus contended by the learned Senior Counsel that both the impugned letters should be quashed by this Court as it caused economic hardship to the petitioner herein and moreover, the petitioner was working as Group C employee and further, revision of pay granted to the petitioner was not at the instance of the petitioner herein. It is also contended that the revision was in the year 2010 and the recovery had been passed in the year 2019, which is well over the five years period as stipulated by the Hon'ble Supreme Court.

10. The learned Special Government Pleader placed reliance on the counter filed by the third respondent. The learned Special Government Pleader pointed out that the petitioner was working only as an Auxiliary Midwife. It had been stated that those who had registered with the Tamil Nadu Nurses & Midwives Council are termed as Auxiliary Midwives. The petitioner however had got the benefit of revision on the basis that she was employed as a Maternity Assistant. The post of Auxiliary Midwife is a standalone post. There is no promotion avenue available to the said post. It is further contended that



WEB COPY

therefore, protection is given by upgrading the pay to Selection Grade, Special Grade and Supertime Grade. It had been contended that the revision of pay by the One-Man Commission would be applicable only to Maternity Assistants and not to Auxiliary Midwives. It had been therefore stated that owing to this particular wrong fixation of pay, the petitioner had benefited from increased pay to which she was not entitled and which was not applicable to the post, which she was holding. It was further stated that the impugned order had been passed immediately when the pension proposal had been issued by the respondents. It had also been further contended that the petitioner herein had herself consented for recovery to be made. It is therefore contended that the writ petition should be dismissed.

11.I have carefully considered the arguments and perused the records available.

12.Even according to the petitioner, she had obtained a certificate as Multispeciality Health Worker (Female) conducted by the Director of Family



Welfare and Preventive Medicine Department. This certificate was obtained on

19.01.1983. The petitioner claims that this is equivalent to a Midwife Nurse

post and she had registered her name with the Tamil Nadu Nurses & Midwives

Council on 08.07.1993. Her registration number is 12560 with effect from

31.01.1982.

13.The issue is the category under which the petitioner had been employed. The petitioner claims that she was employed as a Maternity Assistant. The respondents however claim that she was only an Auxiliary Midwife. It is claimed by the respondents that the registration with the Tamil Nadu Nurses & Midwives Council was only with respect to Auxiliary Midwives and not with respect to Maternity Assistants. While describing the petitioner's post, it had been stated that the petitioner was working as **மருத்துவ மாது**.

That is not a Maternity Assistant post.

14.The certificate which she had obtained was a certificate issued by the Multispeciality Health Worker (Female) conducted by the Director of Family Welfare and Preventive Medicine Department. She can only be categorised as a



WEB COPY

Health Worker, or in other words, termed as a Midwife and not as Maternity

Assistant. As a Midwife performing additional or auxiliary duties, she was

termed as an Auxiliary Midwife. As an Auxiliary Midwife, she is not entitled

for any promotion. If she had been a Maternity Assistant, she would have been

entitled for further promotion. Therefore, since she was not entitled for

promotion, she got protection of pay and in this connection, her pay had been

upgraded, namely, Grade Pay had been upgraded from time to time, firstly, as

Selection Grade, secondly as Special Grade and finally as Supertime Grade.

The final revision of grade pay was from Rs.5200-20200+2000 GP and was

increased to 2400 GP. The One-Man Commission, which had examined the

revision of pay for those who in the various pay bands and examined the

revision of pay of those who are in pay band had of Rs.5200-20200+2400 GP.

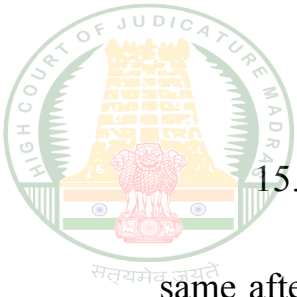
This was only with respect to Maternity Assistants and not with respect to

Auxiliary Midwives. By the recommendation of the One Man Commission

those who were receiving the pay scale of Rs.5200-20200+2400 GP were

increased to Rs.9300- 40000 - GP 4400. The petitioner was not entitled for such

revision. She had however benefited with the same.



WEB COPY

15. The question now is whether the respondents could reexamine the same after a period of five years since this particular revision was made in the year 2010. The respondents had a reasonable opportunity of examining the correctness of pay drawn by the petitioner only when the pension proposal was put up. When the pension proposal was put up, the last pay drawn by the petitioner was Rs.57500/-. This was way above the pay band of Rs.5200-20200+2400 GP. The petitioner could never have earned such an amount in her capacity as an Auxiliary Midwife. Immediately, when this particular pension proposal was put up by the Commissioner, Thirusuzhi Panchayat Union Office/the fifth respondent, the respondents had examined that particular proposal and had rejected the same and had passed the impugned order. If in passing those orders, there had been a delay of five years, the petitioner could have a reasonable case to argue, but the impugned letters were issued within five years. Till that time, the issue was oscillating between the petitioner and the fifth respondent/the Commissioner, Thirusuzhi Panchayat Union Office. When the petitioner was projected to draw a last pay of Rs.57,500/- then she had moved down from Group C and D to Group B Service, which had not been



specifically addressed by the *White Washer* case relied by the learned Senior Counsel.

16. Additionally, the petitioner herself had given a letter undertaking repayment. That fact had also been noted in the aforementioned judgment and it had been stated that when an employee voluntarily gives such a letter, then the employee is bound by that undertaking. The learned Senior Counsel, questioned the bonafide of such a letter and argued that no other option was available to the petitioner and she was forced to give such a letter. She could have approached the Court at an earlier point of time, but unfortunately she had consented for such deduction.

17. I am not in a position to interfere with the impugned orders. The writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition, if any, is also closed.

28-03-2025

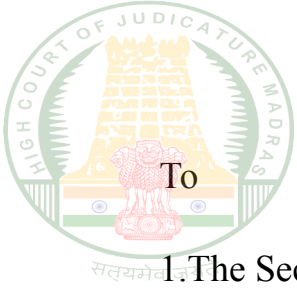
sli

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

WEB

1.The Secretary To Government
Rural Development And Panchayat Raj
Department Fort St George Chennai 9

2.The Secretary To Government
Health And Family Welfare Department
Fort St George, Chennai 9

3.The Director Of Rural Development
Panagal Building Saidapet, Chennai
600 015

4.The Director Of Local Fund Audit
Combined Accounts Office Anbalagan
Maaligai 4th Floor Nandanam Chennai
600 035

5.The Commissioner
Thirusuzhi Panchayat Union Office
M.Reddipatti, Virudhunagar District



WEB COPY

WP No. 6896 of 2024



C.V.KARTHIKEYAN J.
sli

WP No. 6896 of 2024

28-03-2025