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W.P.No.12665 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2025

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THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.12665 of 2025
and
W.M.P.No.14261 of 2025

P. Sivakumar

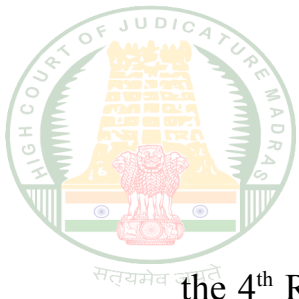
... Petitioner

-Vs-

1. The Director of Public Health and Preventive Medicine,
Chennai – 600 006.
2. The Accountant General (A & E).
Anna Salai,
Chennai – 600 008.
3. The District Health Officer,
Thiruvallur.
4. The Block Medical Officer,
Government Primary Health Centre,
Periyapalayam,
Thiruvallur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari, calling for the concerned records
relating to the order in **ந.க.எண்** 4659/இ7/2024-1 dated 07.11.2024 passed by



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the 4th Respondent and order in न.क.गण.40/अ.क.न/2025 dated 27.02.2025 passed by the 4th Respondent and quash the same and consequently direct the 4th Respondent to refund the recovered amount of Rs.3,49,844/- to the petitioner and to settle the retirement benefits on the basis of the pension proposal submitted on 05.08.2024.

For Petitioner : Mr.M.Gnanasekar
For Respondents : Mr.K.Tippu Sultan,
Government Advocate (for R1, R3 & R4)
Mr.P.Mano Rajan,
Standing Counsel (for R2)

ORDER

The instant writ petition has been filed challenging the impugned order dated 07.11.2024 passed by the second respondent to show cause as to why the excess payment made to him could not be recovered and the impugned order dated 27.02.2025, by and in which the fourth respondents respectively have directed the recovery of a sum of Rs.6,29,532/- from the petitioner on account of excess pay since 1998.

2. The learned counsel for the petitioner would submit that the petitioner retired from service on 31.08.2024, and the impugned orders of recovery was passed subsequent to the retirement, viz., 07.11.2024 and



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27.02.2025, and the alleged excess pay was made with effect from 06.03.1998. He would further contend that the petitioner is a Group C employee. Therefore, this case squarely falls under the judgement of the Hon'ble Supreme Court of India in *State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*, reported in *[(2015) 4 SCC 334]*. Though the learned counsel for the petitioner seriously objects to the recovery, on instructions from his client, he has submitted that he has no objection in respect of re-fixation.

3. Per contra, the learned Government Advocate for the first, third and fourth respondents would vehemently contend that whenever any pay was re-fixed, the employees had given an undertaking to repay the same as and when excess was found to be deducted. Hence, he prayed to dismiss the instant Writ Petition.

4. I have given my anxious consideration to the submissions made on either side.

5. It is an admitted fact that the impugned orders dated 07.11.2024 and



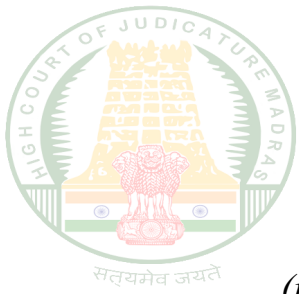
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27.02.2025, was passed subsequent to the retirement of the petitioner, and it is further admitted that the amount alleged to have been paid in excess commenced in the year 1998, which is beyond the period of five years. Though the learned counsel for the respondents would strongly object to this Writ Petition, it is not their case that the excess payment was made due to the misrepresentation by the petitioner, and apart from that, it is further admitted that the petitioner is a Group C employee.

6. In such view of the submission, as rightly contended by the learned counsel for the petitioner, the facts of this case is squarely covered by the Judgment of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** reported in ***[(2015) 4 SCC 334]***. The relevant paragraph is paragraph 18, which reads 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:



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

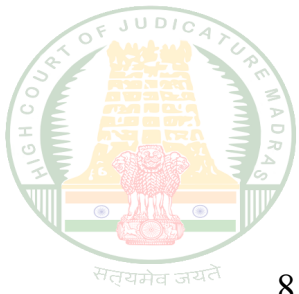
(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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 employer's right to recover.

7. As already observed, if any recovery is ordered after the retirement of the petitioner, that too for payments that have been made since 1998, would definitely cause great hardship to the petitioner and also impinge upon his right to life. Hence, this Court is of the firm view that the impugned orders are liable to be quashed.



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8. In view of the matter, the impugned orders dated 07.11.2024 and 27.02.2025, are hereby quashed to the extent of recovery. However, the re-fixation made by the respondents is confirmed. It is made clear that if the recovery amount has already been recovered by the respondents, the respondents are directed to repay the same without interest within a period of three months from the date of receipt of a copy of this order.

9. In the result, this Writ Petition is partly allowed as indicated above. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No

To

1. The Director of Public Health and Preventive Medicine,
Chennai – 600 006.

2. The Accountant General (A & E).
Anna Salai,
Chennai – 600 008.

3. The District Health Officer,



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C.KUMARAPPAN, J.

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