



W.P.No.42447 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2025

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Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.No.42447 of 2016
and W.M.P.Nos.36337 & 36338 of 2016**

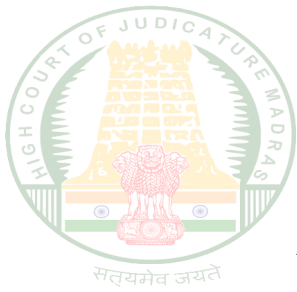
K.Durairaj

...Petitioner

Versus

- 1.Government of Tamil Nadu,
Rep. by Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai – 600 009.
- 2.The Director of Public Health and Preventive Medicine,
Chennai – 600 006.
- 3.The Deputy Director of Health Services,
Salem.
- 4.The Block Medical Officer,
Primary Health Centre,
Panamarathupatti,
Salem District – 636 204.
- 5.The Branch Officer,
O/o. The Accountant General (A & E),
Tamil Nadu,
Chennai – 600 018.

...Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the Second Respondent, pertaining to the order issued to the Petitioner in R.No.29757/VCI/C3/2007 dated 20.02.2015 and the Proceedings of the 5th Respondent relating to No.AG(A&E)/PEN/P08/1/D62-1406/RTD/2007-2008/13638 dated 11.03.2008 to the limited extent of recovery of Rs.81,458/- and to quash the same and to issue consequential directions to the 1st Respondent to regularize the services of the Petitioner as Field Worker with retrospective effect from 16.11.1970 and to grant consequential service and monetary benefits in the light of G.O.Ms.No.272, Health and Family Welfare (AB1) Department dated 12.09.2012 and also to refund the sum of Rs.81,458/- recovered from the DCRG of the Petitioner with 18% interest per annum within a time frame as deem fit by this Court.

For Petitioner : Mr.M.Santhosh
for Mr.M.Ravi
For Respondents – 1 to 4: Mr.K.Tippusulthan,
Government Advocate

ORDER

The relief sought in this Writ Petition is to quash the Order dated 20.02.2015 bearing R.No.29757/VCI/C3/2007 issued by the 2nd Respondent and the Proceedings dated 11.03.2008 bearing No.AG(A&E)/PEN/P08/1/D62-1406/RTD/2007-2008/13638 issued by the



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5th Respondent and to issue consequential directions to the 1st Respondent to regularize the service of the Petitioner as Field Worker with retrospective effect from 16.11.1970 and to grant consequential service and monetary benefits in the light of G.O.Ms.No.272, Health and Family Welfare (AB1) Department dated 12.09.2012 and also, to refund the sum of Rs.81,458/- recovered from the DCRG of the Petitioner with 18% interest per annum.

2. The brief facts of the case are that the Petitioner was appointed as Mazdoor (Field Worker) under Malaria Control Programme on 16.11.1970 on daily wage basis and was promoted as a Record Clerk on 11.06.1990. The services of the Petitioner were regularized with effect from 01.05.1977 by the 3rd Respondent vide Proceedings dated 25.09.2007 bearing R.No.3091/97/E5. Thereafter, the Petitioner retired from service on 31.12.2007 as a Record Clerk.

3. Subsequent to the retirement of the Petitioner, the 5th Respondent issued Proceedings dated 11.03.2008 to the Petitioner, wherein, it has been stated that the Death-cum-Retirement Gratuity (for brevity, “DCRG”) payable to the Petitioner is Rs.1,30,632/- and a sum of Rs.81,458/- is to be



recovered from the said DCRG. Hence, in this regard, the Petitioner gave a

Representation to the Chief Minister's Cell, in response to which, the 2nd

Respondent sent a Reply dated 05.07.2012 stating that necessary proposal

for retrospective regularization of Mazdoor has been sent to the

Government and that it is under active consideration of the Government.

Hence, it was stated that the Petitioner's request will be considered only on

receipt of appropriate orders from the Government.

4. During the year 2012, the Government issued an Order in G.O.Ms.No.272 Health and Family Welfare (AB1) Department dated 12.09.2012, regularizing the services of 106 similarly placed Mazdoors, Head Mazdoors and Laboratory Boys appointed under Malaria Control Programme from the date of their initial appointment.

5. The Petitioner made a Representation dated 23.12.2013 to the 2nd Respondent, requesting to refund a sum of Rs.81,458/- recovered from the Petitioner's DCRG. Further, the Petitioner made a detailed Representation dated 10.07.2014 to the 1st Respondent, requesting to regularize the services of the Petitioner from the date of his initial appointment on 16.11.1970 and



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to refund the amount of Rs.81,458/- recovered from his DCRG in the light of G.O.Ms.No.272 Health and Family Welfare (AB1) Department dated 12.09.2012.

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6. Since there was no response for the aforesaid Representations, the Petitioner filed a Writ Petition in W.P.No.31888 of 2014 before this Court praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 5th Respondent relating to No.AG(A&E)/PEN/P08/1/D62-1406/RTD/2007-2008/13638 dated 11.03.2008 to quash the same to the limited extent of recovery of Rs.81,458/- and to issue consequential directions to the 1st Respondent to regularize the services of the Petitioner as Field Worker with retrospective effect from 16.11.1970 and to grant consequential service and monetary benefits in the light of G.O.Ms.No.272 Health and Family Welfare (AB1) Department dated 12.09.2012 and also, to refund the sum of Rs.81,458/- recovered from the DCRG of the Petitioner with 18% interest per annum within a time frame to be fixed by this Court.

7. The said Writ Petition was disposed of by this Court vide Order dated 05.12.2014, directing the Respondent to consider the Petitioner's



Representation and pass orders thereon, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of that Order.

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8. In this background, the 2nd Respondent issued an Order dated 20.02.2015, stating that the Petitioner's request for regularization of his services from the date of initial appointment is not feasible. Aggrieved by the same, the Petitioner has filed this Writ Petition for the relief stated *supra*.

9. Heard the learned counsel on either side and perused the materials available on record.

10. It is to be noted that in the Counter Affidavit filed by the 3rd Respondent, it has been stated that the Petitioner is not eligible for regularization with effect from 16.11.1970 i.e., from the date of his initial appointment since the Petitioner's name was not included in G.O.Ms.No.272 Health and Family Welfare (AB1) Department dated 12.09.2012.



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11. As far as this case is concerned, the Petitioner retired from service on 31.12.2007. Subsequent to his retirement, the 5th Respondent initiated the recovery proceedings to recover a sum of Rs.81,458/- from the Petitioner's DCRG amount.

12. It is pertinent to state that the law on this subject is covered against the Official Respondents and in favour of the Petitioner, by the Hon'ble Supreme Court in ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer)*** AIR 2015 SC 696.

13. For the sake of clarity, operative portion of the judgment passed by the Hon'ble Supreme Court in ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer)*** AIR 2015 SC 696 reads as under:

“12. 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-III and Class-IV service (or Group 'C' and Group 'D' service).



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(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 employer's right to recover.*

13. *We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.*

14. *The appeals are disposed of in the above terms. "*

14. It is noticed that as per the decision of the Hon'ble Supreme Court in ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) AIR 2015 SC 696*** (referred to *supra*), no recovery can be made from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).



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15. In the light of decision of the Hon'ble Supreme Court in *State of Punjab & Ors. Vs. Rafiq Masih (White Washer)* AIR 2015 SC 696, this Writ Petition is allowed and 1st Respondent is directed to refund a sum of Rs.81,458/- (Rupees Eighty One Thousand Four Hundred and Fifty Eight Only) recovered from the DCRG of Petitioner with 18% interest per annum to the Petitioner, forthwith together with consequential relief. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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- To
- 1.The Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai – 600 009.
 - 2.The Director of Public Health and Preventive Medicine,
Chennai – 600 006.
 - 3.The Deputy Director of Health Services,
Salem.
 - 4.The Block Medical Officer,
Primary Health Centre,
Panamarathupatti,
Salem District – 636 204.
 - 5.The Branch Officer,
O/o. The Accountant General (A & E),
Tamil Nadu,
Chennai – 600 018.



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C.SARAVANAN, J.

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