



W.P.No.21766 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2025

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.21766 of 2025

P.Selvan

... Petitioner

Vs.

1.The District Health Officer
District Health Office
Erode – 600012

2.The Block Medical Officer
Primary Health Centre,
Siruvallur
Erode District – 638104

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to Impugned Proceedings dated 25.11.2024 passed in R.No.1825/A6/2024 on the file of the 1st Respondent and consequently Impugned Proceedings dated 25.11.2024 passed in Na.Ka.No.1825/A6/2024 on the file of the 1st respondent, quash the same and consequently direct the respondent to refund the recovered amount of Rs.2,88,476/- with interest and refix his original pay scale which was received on 31.07.2024 with all attendant benefits within a stipulated period of time as fixed by this Court.



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For Petitioner : Mr.R.Ezhilarasan

For Respondents : Mr.K.Tippu Sultan
Government Advocate

ORDER

The instant writ petition has been filed with a prayer for issuing a Certiorarified Mandamus, to call for the entire records relating to Impugned Proceedings dated 25.11.2024 passed in R.No.1825/A6/2024 on the file of the 1st Respondent and consequently Impugned Proceedings dated 25.11.2024 passed in Na.Ka.No.1825/A6/2024 on the file of the 1st respondent, quash the same and consequently direct the respondent to refund the recovered amount of Rs.2,88,476/- with interest and refix his original pay scale which was received on 31.07.2024 with all attendant benefits within a stipulated period of time as fixed by this Court.

2. The learned counsel for the petitioner would submit the petitioner was originally appointed as Multi Purpose Health Assistant on 20.07.1989 and subsequently, he has been given promotion from time to time. It is the submission of the petitioner that according to the applicable rules, his pay was fixed and he has been drawing the amount as per his eligibility.



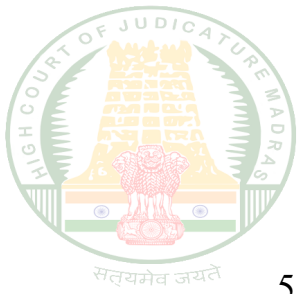
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However, all of sudden, vide impugned order dated 25.11.2024, a sum of Rs.2,88,476/- was recovered by the 1st respondent from his retirement benefits. It is the submission of the petitioner that the recovery was effected from 01.01.2010 on the ground that there was an excess pay since 01.01.2010 and these recoveries were made after the petitioner's retirement on 31.07.2024, which is in contravention to the ruling of Hon'ble Supreme Court in the judgment of *State of Punjab and others vs. Rafiq Masih (White Washer) and others*, reported in (2015) 4 SCC 334.

3. Per contra, the learned Government Advocate appearing for the respondents would strongly object the contention of the petitioner and would submit that the refixation was made in pursuance of the Audit Report in view of applicable Government Order and furthermore, whenever increment was given to the petitioner, he had given an undertaking that if any excess amount received by him, he would return back the same to the Treasury. Therefore, it is the submission of the learned Government Advocate for the respondents that there is no ground to interfere with the impugned orders.

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



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5. Admittedly, it is not the case of the respondents that the excess pay was made on the misrepresentation of the petitioner or any false statement made before the respondents. The pay refixation was made by the respondents on their own. Therefore, if there was any excess amount paid to the petitioner beyond his entitlement, that is not the fault of the petitioner and all these years since 01.01.2010, he was allowed to receive such an excess amount cannot be all of sudden directed to recover that too after he retired from service.

6. In this connection, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others***, reported in **(2015) 4 SCC 334**. Paragraph No.18 of the said judgment, 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).

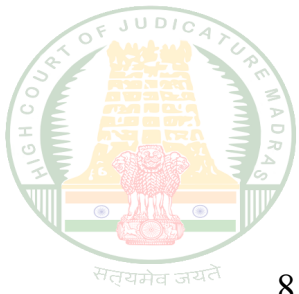
(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(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. In view of the above ratio, this is a fit case where the recovery ordered against the petitioner is liable to be quashed. Accordingly, the impugned orders dated 25.11.2024 passed by the 1st respondent are quashed.



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8. At this juncture, the learned counsel for the petitioner would submit that a sum of Rs.2,88,476/- has already been recovered from his retirement benefits. If such recovery was effected, the respondents are directed to refund the same to the petitioner, within a period of eight weeks from the date of receipt of copy of this order, without any interest.

9. Coming back to the question of refixation of pay, it is the specific submission of the learned counsel for the petitioner before refixing his pay, no notice was issued. At this juncture, the learned Government Advocate would submit that if any direction given to them, they would refix the pay of the petitioner, after giving due notice.

10. In such view of the matter, while this Court quashing the recovery order dated 25.11.2024 and the pay fixation dated 25.11.2024, this Court would like to remit back the matter only to the extent of refixation of the petitioner's pay by the respondents, after giving due notice to the petitioner, within a period of eight weeks from the date of receipt of copy of this order.

11. With the above directions, the Writ Petition is allowed. No costs.



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dm

Index : Yes/No

Speaking order

Neutral Citation : Yes/No

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C.KUMARAPPAN, J.

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