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W.A.(MD)NO.512 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)No.512 of 2023

P.Sironmani

... Appellant / Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Health and Family Welfare(L2) Department,
Secretariat, Chennai.
 2. The Accountant General,
O/o.the Accountant General (Accounts & Entitlements)
Tamil Nadu,
361, Anna Salai, Teynampet,
Chennai – 600 018.
 3. The Regional Joint Director,
Treasuries and Accounts Department,
No.1, Ground Floor, Class-4 Residence,
B.S.N.L.Compound,
Vannarapettai,
Tirunelveli – 627 003.
 4. The Assistant Treasury Officer,
O/o.the Sub Treasury Office,
Palayamkottai,
Tirunelveli District.
- ... Respondents/Respondents



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 24.11.2022 passed by the learned Judge in W.P.(MD)No.20529 of 2017 and allow the writ appeal.

For Appellant : Mr.M.E.Ilango,
for M/s.Ajmal Associates.

For R-1,R-3&R-4 : Mr.A.Kannan,
Additional Government Pleader.

For R-2 : Mr.P.Gunasekaran

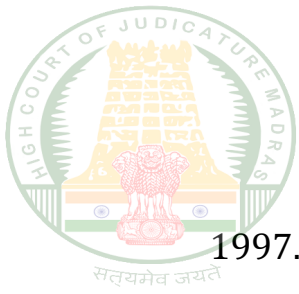
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J U D G M E N T

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard both sides.

2. The appellant joined the Health Department as Health Assistant on 01.09.1958. He was promoted to the post of Block Health Supervisor on 19.10.1992. He was offered Selection Grade in the promoted post on 01.04.1997. He retired from service on 30.04.1998. His pension was fixed based on the last drawn payment. Several years thereafter, the Department took the stand that the appellant ought not to have been granted Selection Grade in the year



1997. Therefore, recovery was sought to be made and pension was also sought to be refixed. Challenging the same, W.P.(MD)No.20529 of 2017 came to be filed.

3. The writ petition was disposed of by the learned single Judge on 24.11.2022 in the following terms:-

“9. Even though, there is no proper Adhoc rules, for each year the government had issued guidelines to grant promotion to the post of Block Health Supervisor, whereby the said post is considered as feeder category to the post of Technical Personal Assistant. Therefore, the claim of the petitioner that there is no promotional post is incorrect.

10. In view of the foregoing reasons, this Court is of the considered opinion that the plea of the respondent is correct. Since the Government without formulating proper adhoc rules, every year issued Government Orders and has considered the Block Health Supervisor as the feeder category to the post of Technical Personal Assistant and to substantiate this claim has produced G.O. (Rt)No. 985, Health and Family Welfare (L2) Department, dated 28.06.2007 and G.O.(Rt).619, Health and



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Family Welfare (L2) Department, dated 03.04.2008.

Therefore, the claim of the petitioner that there is no promotion from the post of Block Health Supervisor is incorrect. Consequently, the claim of the petitioner to fix under selection grade also is incorrect.

11. The petitioner was 78 years at the time of filing the writ petition and now the petitioner is aged about 83 years. Therefore, this Court deems it fit not to recover the amount which was already paid to the petitioner. However, the Learned Counsel appearing for the petitioner submitted that some of the installments were recovered. Since the petitioner is not entitled to the said amount, the said amount if repaid to the petitioner it would be illegal amount in the petitioner's hands and hence the petitioner cannot claim the amount, which was already recovered. The respondents need not recover any further amount and the respondents need not repay the already recovered amount. However the respondents are directed to refix the correct fixation and disburse the pension, within a period of eight weeks from the date of receipt of a copy of the order. "

Aggrieved by the same, this writ appeal has been filed.



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4. We made it clear at the very outset that there is no question of recovery of any amount already paid to the appellant. The decision of the Hon'ble Supreme Court reported in ***AIR 2015 SC 696 (State Of Punjab & Others Vs. Rafiq Masih (White Washer)*** will clearly come to the appellant's rescue.

5. The next question that calls for consideration is whether the pension already fixed for the appellant should be refixed. The learned counsel for the appellant points out that the respondents are proceeding on the wrong presumption that the post of Block Health Supervisor held by the writ petitioner at the time of retirement is a feeder post for the post of Technical Personal Assistant. In other words according to the appellant, the post of Technical Personal Assistant is not a promotional post for the post of Block Health Supervisor. It is only the post of Health Inspector that is the feeder grade for the post of Technical Personal Assistant. This aspect of the matter deserves to be gone into.



6.One other aspect is in favour of the appellant. The appellant

had retired as early as on 30.04.1998. Therefore, no pay anomaly will arise as apprehended by the Department. The matter is remitted to the file of the first respondent. The first respondent will issue fresh notice to the appellant and after hearing the appellant, he will pass final orders on merits and in accordance with law. Till such final order is passed, the appellant will continue to draw the pension as originally fixed. Whatever amount that was recovered from the appellant shall be refunded to him. This writ appeal stands disposed of. No costs.

(G.R.SWAMINATHAN, J.) & (K.RAJASEKAR, J.)
3rd July 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To:

1. The Principal Secretary,
Health and Family Welfare(L2) Department,
Secretariat, Chennai.
2. The Regional Joint Director,
Treasuries and Accounts Department,
No.1, Ground Floor, Class-4 Residence,
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3. The Assistant Treasury Officer,
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8

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