

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2017

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The Hon'ble Mr.Justice M.Sathyanarayanan

W.P.No.4254 of 2017

and

W.M.P.No.4406 of 2017

P.Palanisamy

... Petitioner

Vs.

1. The Director of Medical Education,
Kilpauk, Chennai- 600 010.
2. The Dean,
Government Mohan Kumaramangalam Medical College,
Salem – 30. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari, to call for records relating to the impugned proceedings issued by the second respondent, in Se.Mu.Order No.4833/Ni4/2016, dated 19.01.2017, and to quash the same.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.V.Anandamoorthy
Addl.Government Pleader (Education)

ORDER

By consent, the Writ Petition is taken up for final disposal.

2. The petitioner was initially appointed as Lab Technician Grade-I, in the Department of Directorate of Medical Education in the year 1991 and his services were regularized from the date of initial appointment. Subsequently, his probation was also declared. The petitioner got his promotion to the post of Librarian Grade-I, vide proceedings of the first respondent, dated 11.10.2006, and posted in the Government Mohan Kumaramangalam Medical College, Salem on 12.10.2006 and regularization was also granted with effect from 12.10.2006, vide proceedings of the first respondent, dated 12.10.2006. The grievance expressed by the petitioner is that, all of a sudden, without putting the petitioner on notice, the second respondent passed impugned proceedings, dated 19.01.2017 stating that as per the letter of the first respondent, dated 05.03.2016, the petitioner after joining the post as Librarian, ought to have passed Accounts Test within two years and in the absence of the same, he has been informed that recovery with regard to the benefits earned between 01.10.2008 to 30.05.2006 will be effected. Challenging the recovery proceedings, the petitioner has come forward with

this Writ Petition.

3. Mr.G.Sankaran, learned counsel appearing for the petitioner has invited the attention of this Court to the impugned order and would submit that before effecting recovery, the petitioner has not been put on notice and therefore, prays for interference.

4. Per contra, Mr.V.Anandamoorthy, learned Additional Government Pleader, who accepts notice on behalf of respondents would submit that, since the petitioner did not pass Accounts Test within the prescribed time limit, order of recovery came to be passed rightly and prays for dismissal of the Writ Petition.

5. This Court considered the rival submissions and also perused the materials placed on record.

6. A perusal of the impugned proceedings of the second respondent would clearly reveal that before ordering recovery, no opportunity whatsoever has been afforded to the petitioner and in the considered opinion

of this Court, the said order is *per se* in violation of principles of natural justice, and therefore, warrants interference. At this juncture, the learned Additional Government Pleader for the respondents would contend that, since the calculation in the form of annexure has been given along with the impugned proceedings, it may be treated as a show cause notice, for which, the petitioner may respond and considering the reply/response, the second respondent would pass appropriate orders.

7. In the light of the above facts and circumstances of the case, this Court, instead of setting aside the impugned proceedings of the second respondent dated 19.01.2017, directs the same to be treated as a show cause notice, for which the petitioner is directed to submit his explanation/response within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the second respondent is directed to consider the same on merits and in accordance with law and pass appropriate orders within a further period of four weeks thereafter, and communicate the decision taken to the petitioner, and till such time, all further proceedings as to the recovery shall be deferred.

8. This Writ Petition is disposed of accordingly. No costs.

Consequently, connected Writ Miscellaneous Petition is closed.

21.02.2017

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Index : Yes/ No

To

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Salem – 30.

M.Sathyananarayanan.J.,

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