

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.21364 of 2006  
and  
M.P.Nos.1 and 2 of 2006

M.Gunasekaran ... Petitioner

Vs.

- 1.The Director of Medical Education,  
Kilpauk, Chennai - 600 010.
- 2.The Director and Superintendent,  
Institute of Child Health and  
Government Hospital for Children,  
Egmore, Chennai - 600 008. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records of the 2<sup>nd</sup> respondent in his proceeding Ref.No.3585/E1/06, dated 07.04.2006 and the consequential order of recovery passed by the 2<sup>nd</sup> respondent in Ref.No.3585/E1/2006, dated 29.05.2006 and quash the same.

For Petitioner : Mr.Doraisamy  
Senior Counsel  
for Mr.Muthumani Doraisami

For Respondents : Mr.R.Govindasamy  
Spl. Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorari to call for the records of the 2<sup>nd</sup> respondent in his proceeding Ref.No.3585/E1/06, dated 07.04.2006 and the consequential order of recovery passed by the 2<sup>nd</sup> respondent in Ref.No.3585/E1/2006, dated 29.05.2006 and quash the same.

2. The facts in a nutshell are as under: The petitioner was appointed as Air Conditioner Mechanic on 10.05.1989, through the

employment exchange, purely based on his qualification. He was promoted to the post of Junior Engineer (Steam Laundry) with effect from 04.08.2005.

3. It is stated that the second respondent vide proceedings dated 07.04.2006 reverted the petitioner from the post of Junior Engineer (Steam Laundry) to the post of Air Conditioner Mechanic without giving any opportunity to the petitioner to put forth his case.

4. It is averred that the petitioner also sent a representation to the respondents on 03.05.2006 and the same did not evoke any response whatsoever from the respondent authorities. However, the second respondent, vide proceedings dated 29.05.2006, ordered recovery of the excess amount of pay and allowance paid to the petitioner in the promoted post.

5. In such backdrop, the present writ petition is filed for the relief stated supra.

6. The learned Senior Counsel appearing on behalf of the petitioner contends that before passing the impugned order of reversion, no opportunity was afforded to the petitioner and, therefore, the same is in violation of the principles of natural justice.

7. The learned Senior Counsel further contended that similarly placed persons were promoted to the post Junior Assistant and were not reverted and such reversion only in respect of the petitioner, who worked for almost 17 years as Air Conditioner Mechanic without any blemish, is discriminatory.

8. Per contra, the learned Special Government Pleader appearing on behalf of the respondents submits that the petitioner was irregularly promoted without verifying and adhering to the rules, as the post of Junior Engineer (Steam Laundry) is not a promotional post, and, therefore, the order of reversion and consequential recovery of excess amount paid to the petitioner is well considered.

9. I heard Mr.Doraisamy, Senior Counsel for Mr.Muthumani Doraisami, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents and perused the documents available on record.

10. At the outset, it is to be noted that this Court, vide order dated 17.07.2006, granted interim stay of reversion as well as recovery and the said order continues even as on date.

11. In the case on hand, admittedly, the petitioner was appointed as Air Conditioner Mechanic on 10.05.1989, through the employment exchange, purely based on his qualification and he was later promoted by the respondent authorities to the post of Junior Engineer (Steam Laundry) with effect from 04.08.2005 and by virtue of the interim order passed by this Court, he continues to hold the promoted post and drew salary of the promotional post. Therefore, as on date, the said order of reversion was not given effect to.

12. It is not the case of the respondent authorities that the petitioner has obtained promotion by misrepresentation or playing fraud. The petitioner was promoted by the proceedings of the respondent authorities, purely based on his ability and seniority. When a civil right conferred on the petitioner is likely to be affected by reverting him to a lower cadre, in my considered opinion, it would be just and proper and in consonance with the principle of natural justice that such reversion should have been made only after giving a notice to the petitioner and after affording an opportunity of hearing.

13. The above view of this Court is fortified by a decision of the Supreme Court in Ram Ujarey v. Union of India, (1999) 1 SCC 685, wherein it is held that if an employee has to suffer civil consequences, ordinarily the principles of natural justice are required to be complied with. In the said decision, it was observed thus:

"17. There is yet another infirmity in the impugned order of reversion. The appellant had been allowed the benefit of service rendered by him as Coal Khalasi in the Loco Department from 1964 to 1972 as that period was counted towards his seniority and it was on that basis that he was called for the trade tests which the appellant had passed and was, thereafter, promoted to the posts of Semi-skilled Fitter and Skilled Fitter. If the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the

appellant. The appellant having earned two promotions after having passed the trade tests, could not have been legally reverted two steps below and brought back to the post of khalasi without being informed that the period of service rendered by him from 1964 to 1972 could not be counted towards his seniority and, therefore, the promotion orders would be cancelled. In a situation of this nature, it was not open to the respondents to have made up their mind unilaterally on facts which could have been shown by the appellant to be not correct but this chance never came as the appellant, at no stage, was informed of the action which the respondents intended to take against him."

14. In the case on hand, the petitioner has discharged his duties in the lawfully promoted post for certain period of time. When such benefit is being denied to the petitioner and he is being reverted to a lower post, certainly, the principles of natural justice should be strictly observed. The non compliance of the elementary principles of natural justice persuades this Court to set aside the impugned proceedings.

15. That apart, the learned Senior Counsel appearing on behalf of the petitioner had filed an additional typed set of papers which shows that various persons, who are similarly placed as that of the petitioner in the cadre of Refrigeration Mechanic, etc., have been promoted to the post of Junior Engineer (Steam Laundry). Even on this score, this Court does not find any reason to discriminate the petitioner. The respondent authorities have not placed any iota of material refuting the credibility of the documents which find place in the additional typed set of papers.

16. For the foregoing reasons, the writ petition is allowed and the orders impugned in his proceeding Ref.No.3585/E1/06, dated 07.04.2006 passed by the 2<sup>nd</sup> respondent and the consequential order of recovery passed by the 2<sup>nd</sup> respondent in Ref.No.3585/E1/2006, dated 29.05.2006, are set aside. No costs. Consequently, M.P.Nos.1 and 2 of 2006 are closed.

Sd/-  
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director of Medical Education,  
Kilpauk, Chennai - 600 010.

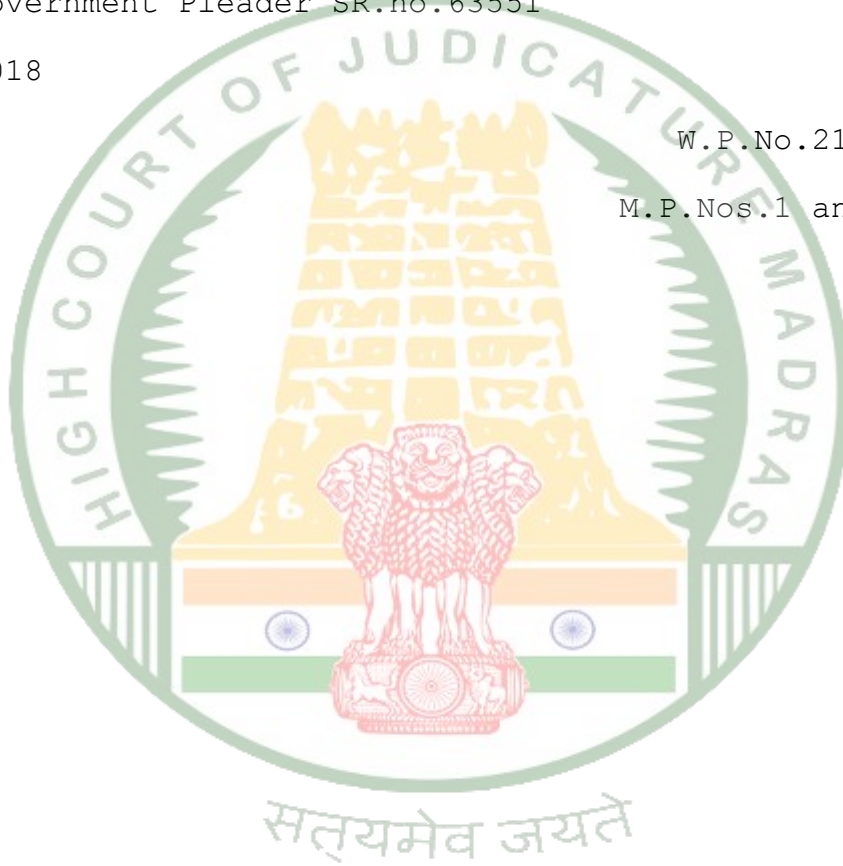
2.The Director and Superintendent,  
Institute of Child Health and  
Government Hospital for Children,  
Egmore, Chennai - 600 008.

+1cc to Mr.Muthumani, Advocate Sr.NO.62970

+1cc to Government Pleader SR.no.63551

sm:20.4.2018

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and  
M.P.Nos.1 and 2 of 2006



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