

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.24283 & 23805 of 2012
and M.P.Nos.1 & 2 of 2012 & MP 1/13

K.Mahendran

.. Petitioner in
W.P.No.24283/2012

R.Nagarajan

.. Petitioner in
W.P.No.23805/2012

Vs.

1. Director of Medical Education,
O/o. Director of Medical Education,
Kilpauk, Chennai 600 010.

2. The Dean,
Coimbatore Medical College Hospital,
Coimbatore 641 018.

.. Respondents
in both W.Ps.

Prayer in W.P.No.24283 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records from the file of the 2nd respondent made in Na.Ka.No.13923/Ni5/2008 dated 02.08.2012 and quash the same and further direct the 2nd respondent to pay the salary of the petitioner without any recovery whatsoever.

सत्यमेव जयते

Prayer in W.P.No.23805 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records from the file of the 2nd respondent made in R.No.2631/E1/2012 dated 31.05.2012 of the 2nd respondent as far as ordering for the recovery of Rs.3,34,880/- as ordered in Ref.No.13923/E5/2008 dated 01.04.2009 and further proceedings made in Na.Ka.No.13923/Ni5/2008 dated 02.08.2012 and quash the same and further direct the 2nd respondent to release the entire amount lying on the account of the petitioner's DCRG/ Retirement benefits within the stipulated time.

(In both W.Ps.)
For Petitioner : Mr.V.Ashok Kumar
For Respondents : Mr.R.S.Selvam,
Government Advocate

C O M M O N O R D E R

Writ Petition No.24283 of 2012 is filed to issue a writ of Certiorarified Mandamus, calling for the records from the file of the 2nd respondent made in Na.Ka.No.13923/Ni5/2008 dated 02.08.2012 and quash the same and further direct the 2nd respondent to pay the salary of the petitioner without any recovery whatsoever.

Writ Petition No.23805 of 2012 is filed to issue a writ of Certiorarified Mandamus, calling for the records from the file of the 2nd respondent made in R.No.2631/E1/2012 dated 31.05.2012 of the 2nd respondent as far as ordering for the recovery of Rs.3,34,880/- as ordered in Ref.No.13923/E5/2008 dated 01.04.2009 and further proceedings made in Na.Ka.No.13923/Ni5/2008 dated 02.08.2012 and quash the same and further direct the 2nd respondent to release the entire amount lying on the account of the petitioner's DCRG/ Retirement benefits within the stipulated time.

2.Both the petitioners are challenging the order of recovery passed against them. The facts are one and the same in both the Writ Petitions and therefore, they are disposed of by this common order.

3.The learned counsel appearing for the petitioners contended that the petitioners are Pharmacists and are incharge of Medical store in Coimbatore Medical College Hospital, Coimbatore. One INOX Air Products had claimed that 76 Oxygen cylinders and 1 Nitrogen cylinder valued at Rs.6,69,760/- were not returned to them. The said Company raised invoices claiming the said sum from the Hospital. On receipt of the said communication from INOX Air Products Ltd., the 2nd respondent, the Dean of the Coimbatore Medical College Hospital constituted a seven member committee to find out the persons who were responsible for the shortage. Both the petitioners were called upon to appear before the said committee. They appeared before the committee and gave their statement. The committee submitted a report dated 12.11.2008. In the report, there was no finding against the petitioners. The committee gave a finding that the drivers and assistants may be responsible for the shortage of cylinders. In spite of the same, the 2nd respondent by the proceedings in Na.Ka.No.13923/Ni5/2008 dated 01.04.2009 ordered

to recover a sum of Rs.3,34,880/- each from the petitioners. The petitioners filed W.P.Nos.6493 and 20764 of 2010 challenging the said order of recovery. This Court by the order dated 15.09.2011 set aside the order of recovery and remitted back the matter to the 2nd respondent for conducting full fledged enquiry and thereafter to fix responsibility on the persons who have given room for the loss, after giving opportunity to the petitioners.

3(i).After the remand, the 2nd respondent did not issue any charge memo to the petitioners. The petitioners were directed to appear before the three member committee on 16.05.2012. The petitioners appeared before the committee as directed by the 2nd respondent. On that day they were asked by the three member committee to fill up questionnaire consisting of 10 questions. The petitioners filled up the said questionnaire and handed over the same to the committee. No witness was examined by the committee. The petitioners subsequently came to know that prior to them, one Ms.Revathi (Retired Administrative Officer) and one Mr.Kulanthai Raj (Retired Manifold Technician) were examined and even they were also asked to fill up the questionnaire. The petitioners did not know what was the questions that were asked to the said Ms.Revathi (Retired Administrative Officer) and Mr.Kulanthai Raj (Retired Manifold Technician) and what was the answers given by them. The petitioners were not given copies of the said questions and answers. No enquiry was conducted as per the order of this Court dated 15.09.2011. No Show Cause Notice was issued before the enquiry and the present impugned order came to be passed.

3(ii).This Court by the order dated 15.09.2011 held that the order of recovery is impermissible and set aside the order of recovery and directed the 2nd respondent to conduct full fledged enquiry. In spite of the order of this Court, no enquiry was conducted. Once again, farce enquiry was conducted and liability was fixed on the petitioners. In spite of the request of the petitioners to lodge police complaint, the 2nd respondent did not give any complaint to the police. The impugned order of the 2nd respondent is arbitrary, unilateral, unsustainable and prayed to quash the impugned order and allow the Writ Petitions.

4.Per contra, the learned Government Advocate appearing for the respondents contended that the petitioners were incharge of the Medical Store Office and they are incharge of cylinders and it is their duty to maintain the stock position of all the items under their custody. The petitioners cannot simply shift their responsibility. The petitioners failed in their duty to maintain the stock diligently. The enquiry committee recorded the specific finding against the petitioners that the petitioners have not maintained the stock position. The enquiry committee submitted their report and therefore, there is no necessity to

lodge police complaint and prayed for dismissal of both the Writ Petitions.

5. Heard the learned counsel appearing for the petitioners as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

6. The recovery of Rs.6,69,760/- is sought for from the petitioners for shortage of 76 Oxygen cylinders and 1 Nitrogen cylinder. From the materials on record, it is seen that there is nothing on record to show when the shortage of cylinders has occurred. The 2nd respondent did not issue any Show Cause Notice to the petitioners and did not conduct any enquiry against the petitioners. The 2nd respondent appointed seven member committee, who gave a report stating that the cylinders would have been shifted by the drivers and assistants in the lorry. Except stating that the stock register was not maintained in the Hospital, the said committee did not give any report that the petitioners were responsible for the shortage. The 2nd respondent without any enquiry and without giving any opportunity to the petitioners, fixed liability on the petitioners and directed them to pay a sum of Rs.3,34,880/- each. When the said order was challenged by the petitioners in W.P.Nos.6493 and 20764 of 2010, this Court by the order dated 15.09.2011 set aside the order of recovery passed by the 2nd respondent and remitted back the matter directing the 2nd respondent to conduct full fledged enquiry and give opportunity to the petitioners.

7. From the materials on record and impugned orders, it is seen that in spite of the orders of this Court, the 2nd respondent did not issue any Show Cause Notice to the petitioners and conduct domestic enquiry as per law. The 2nd respondent again constituted a three member committee to enquire into the matter. As rightly contended by the learned counsel appearing for the petitioners, no witness was examined before the three member committee and no document was marked to fix liability on the petitioners. Without furnishing the report and without giving any opportunity to the petitioners to put forth their defence, the 2nd respondent fixed liability on the petitioners without any basis and ordered recovery by impugned order. The 2nd respondent has not produced any materials to show that the petitioners alone are responsible for the shortage. Further, the 2nd respondent has not denied the contentions of the petitioners that there is no godown to keep the cylinders in lock and key and all the cylinders were kept in open place. The committee has observed that the cylinders would have been removed by drivers and assistants in the lorry. In spite of the said finding, the 2nd respondent has not given any complaint to the concerned police to investigate and prosecute the persons responsible for the shortage. The impugned orders of the 2nd

respondent are without any basis and the same was passed in violation of principles of natural justice.

8. For the above reasons, the impugned order of the 1st respondent made in Na.Ka.No.13923/Ni5/2008 dated 01.04.2009 is quashed and both the Writ Petitions are allowed. No costs. If any amount is recovered from the petitioners, the 2nd respondent is directed to refund the said amount to the petitioners within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

gsa

To

1. The Director of Medical Education,
O/o. Director of Medical Education,
Kilpauk, Chennai 600 010.

2. The Dean,
Coimbatore Medical College Hospital,
Coimbatore 641 018.

+1cc to Mr. SU. Srinivasan, Advocate SR.No.59344

+1cc to Government Pleader, High Court, Madras SR.No.59748

W.P.Nos.24283 & 23805 of 2012

CA (CO)
GMY (04/09/2019)

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