IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.04.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.11787 of 2019
and
W.M.P.No.12006 of 2019

N.Vinoth
..petitioner
Vs

The Joint Director
Head Quarters
Directorate of Co Operative Audit
Integrated Finance Department
Office Complex, 2nd Floor
No.571, Anna Salai
Chennai 600 035.
..Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned Order passed by the Respondent in Na.Ka.No.10340/2019/Apa 1, dated 09.04.2019 served on the Petitioner dated 11.04.2019 and quash the same.

For Petitioner : Mr.A.R.Nixon

For Respondent : Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

The order of termination, terminating the service of the writ petitioner on the ground that the writ petitioner has not passed the requisite tests, as contemplated in the conditions of appointment in proceedings dated 09.04.2019 is under challenge in the present writ petition.

2. The impugned order states that the probation can be declared, provided the writ petitioner has passed in the requisite departmental tests as per the conditions of appointment. In view of the fact that the writ petitioner has not passed the requisite departmental tests, even after completion of 5 years, the competent authority invoked Sections 31(1) (iv) Rule 31(3) of the Tamil Nadu Government Servants Conditions of Service Act, 2016 and issued the impugned order of termination.

3. The learned counsel for the writ petitioner states that Section 31 of the Act contemplates that the writ petitioner is entitled for an opportunity of show cause notice to defend his case against the probation.

4.In the present case, no such Show Cause Notice is issued to the writ petitioner enabling him to submit his explanations and defend his case by assigning the reasons, why he could not be able to complete the tests. In the absence of any such opportunity to be provided under the provisions of the Act, the impugned order is untenable. On a perusal of the impugned order, there is no reference in respect of the opportunity provided to the writ petitioner. Thus,

the authorities competent, on receipt of the explanation from the writ petitioner must pass a speaking order assigning the reasons and by considering the explanations/objections to be submitted by the writ petitioner. In this view of the matter, the present writ petition is a fit case for remanding.

5. Accordingly, the impugned order passed by the respondent in proceedings dated 09.04.2019 is quashed.

6.The respondent is directed to issue Show Cause Notice to the writ petitioner setting out all the facts within a period of four weeks from the date of receipt of a copy of this order. On receipt of Show Cause Notice, the writ petitioner is directed to submit his explanations within a period of two weeks from the date of receipt of such show cause notice. Thereafter, the respondent is at liberty to consider the materials available on record including the explanations submitted by the writ petitioner and pass final orders on merits and in accordance with law within a period of four weeks there from.

7. Accordingly, the present writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kmm/pns

To
The Joint Director
Head Quarters
Directorate of Co Operative Audit
Integrated Finance Department
Office Complex, 2nd Floor
No.571, Anna Salai
Chennai 600 035.

+1cc to Mr.A.R.Nixon , Advocate SR.No. 37418

W.P.No. 11787 of 2019

A.SK(21/06/2019)

16.04.2019