



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.6640 of 2015

and

M.P. (MD)No.1 of 2015

R.Rajkumar

... Petitioner

Vs.

1.The Director of Drug Control,
Chennai-600 006.

2.The Assistant Director of
Drug Control, Madurai Zone,
Madurai-625 020.

3.The Joint Director of
Medical and Rural Health Service,
Dindigul, Dindigul District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the second respondent in his proceedings Na.Ka.No.1168/A1/2014, dated 17.04.2015 and quash the same.

For Petitioner : Mr.B.Saravanan

For Respondents : Mr.D.Muruganandham
Additional Government Pleader

ORDER

The order of recovery issued by the Assistant Director of Drug Control in proceedings dated 17.04.2015 is under challenge in the present writ petition.

2. The writ petitioner was appointed as Junior Assistant in the Department of Health and Family Welfare on 31.10.1988. He was promoted to the post of Assistant and joined duty on 20.03.1998 and he opted the fixation of pay in the post of Assistant with effect from 01.10.1998 and accordingly his pay was fixed at Rs.4,300/- in the scale of pay of Rs.4000-100-6000.

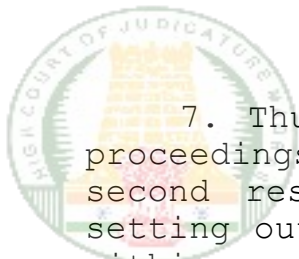


3. One Mr.R.Sivakumar was appointed as Junior Assistant in the same department on 29.10.1986 and he was posted in the special temporary post of Junior Assistant on 29.10.1986 and promoted to the post of Assistant on 14.06.2007 and was fixed with the higher scale of pay and he has drawn high salary than that of the writ petitioner. To rectify the pay anomaly on par with his junior, the petitioner had submitted an appeal to the authority and the said appeal was considered and the pay of the writ petitioner was stepped up on par with his junior. He was receiving the scale of pay on par with his junior. Suddenly, the impugned order dated 17.04.2015 was issued stating that excess pay was granted to the writ petitioner and accordingly a sum of Rs.1,17,206/- (Rupees One Lakh, Seventeen Thousand, Two Hundred and six only) is sought to be recovered through monthly installments.

4. Learned Counsel appearing on behalf of the writ petitioner made a submission that the impugned order of recovery has been issued without any show cause notice or opportunity to the writ petitioner.

5. Learned Additional Government Pleader appearing on behalf of the respondents made a submission that as per Reference No.3 cited in the impugned order, the writ petitioner has submitted his explanation to the authorities and that was also considered by the second respondent while passing orders. Learned Additional Government Pleader is of the opinion that opportunity was given to the writ petitioner for the purpose of defending his case. Thus the writ petition is liable to be dismissed.

6. A perusal of the impugned order carefully, especially paragraph No.1 of the impugned order states that explanation was submitted by the writ petitioner with reference to the excess payment of Rs.57,921/- (Rupees Fifty Seven Thousand Nine Hundred and Twenty one only). Further the said representation was sent to the first respondent-the Director of Drug Control through the second respondent. However the impugned order is issued by the second respondent himself. Thus there is a contradiction in the statement in the impugned order itself. The explanation submitted by the writ petitioner was communicated to the first respondent for consideration. However, the impugned order has been passed by the second respondent may be pursuant to the instructions of the first respondent. However the amount sought to be recovered initially was Rs.57,921/- (Rupees Fifty Seven Thousand Nine Hundred and Twenty one only). But the impugned order states that the total sum of Rs.1,17,206/- (Rupees One Lakh, Seventeen Thousand Two Hundred and six only) is to be recovered. There is a difference in the calculation. Thus the writ petitioner is entitled for an opportunity to defend his case in respect of the impugned order. In view of the fact that there is a discrepancy with reference to the amount for which the writ petitioner submitted the explanation and the amount sought to be recovered, this case has to be remanded for re-



7. Thus the impugned order passed by the second respondent in proceedings Na.Ka.No.1168/A1/2014, dated 17.04.2015 is quashed. The second respondent is directed to issue fresh show cause notice setting out the entire facts and the details to the writ petitioner within a period of four weeks from the date of receipt of a copy of this order and on receipt of show cause notice, the writ petitioner is permitted to submit his explanation within a period of two weeks thereafter and on receipt of the same, the second respondent is directed to consider the merits and pass final orders within a period of twelve weeks there from.

8. With the above directions, the Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Director of Drug Control,
Chennai-600 006.

2.The Assistant Director of
Drug Control, Madurai Zone,
Madurai-625 020.

3.The Joint Director of
Medical and Rural Health Service,
Dindigul, Dindigul District.

4.The Section Officer,
Writ Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.B. SARAVANAN, Advocate (SR-19695[F] dated 12/10/2020)

+1 CC to M/s.Special Govt.Pleader (SR-19909[F] dated 13/10/2020)

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