



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.2929 of 2017

and

W.M.P. (MD)Nos.2376 and 5822 of 2017

B.Manikandan (died)

M.Chandresh (minor aged 17 years),
S/o.Late.B.Manikandan,
represented by Maternal Grandfather and Guardian
S.Shanmugakumarasamy. ... Petitioners

vs.

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

2.The Dean,
Madurai Medical College,
Madurai - 20. ... Respondents

***(Petitioner substituted, vide Court Order,
dated 15.03.2022, in W.M.P. (MD)No.2801
of 2022)***

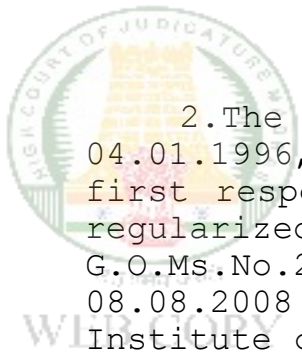
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the 2nd Respondent in K.Dis.No.9675/E2/4/2015, dated 02.12.2016 and to quash the same.

For Petitioner : Mr.F.Deepak

For Respondents : Mr.N.Ramesh Arumgam
Government Advocate (Civil side)

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the 2nd Respondent in K.Dis.No.9675/E2/4/2015 dated 02.12.2016 and to quash the same.

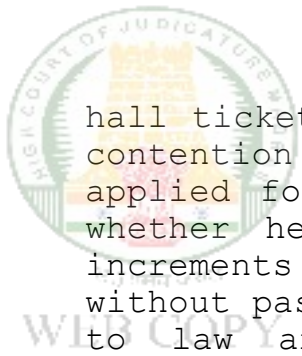


2.The deceased petitioner was appointed as Librarian on 04.01.1996, on compassionate ground as per the proceedings of the first respondent, dated 11.12.1995. After the appointment, he was regularized from the date of his initial appointment as per G.O.Ms.No.256, Health and Family Welfare Department, dated 08.08.2008 and the subsequent orders issued by the Director of Institute of Mental Health, Kilpauk, Chennai, dated 19.08.2008. The probation was declared in the post of Librarian on 04.01.1998, vide proceedings, dated 24.10.2008. The deceased petitioner was granted Selection Grade in the post of Librarian on completion of ten years on 20.01.2006. On 02.12.2016, the second respondent issued the impugned orders, stating that the petitioner is not eligible for periodical increments without passing Accounts Test and hence, his increment granted for the period from 01.01.1998 to 30.12.2015 was sought to be recovered through the impugned letter. The first respondent has directed all the institutions to take action to recover the excess payment paid to the Librarians, who have not passed the Accounts Test, after the issuance of the show cause notice as per the direction of the first respondent. The second respondent issued show cause notice, directing the petitioner to submit proper explanation for not passing the Accounts Test and also to show cause why the recovery be initiated for excess payment from the petitioner.

3.The petitioner after receiving the show cause notice submitted an explanation stating that while his appointment was regularized, there was no mention directing the deceased petitioner to pass the accounts test. Therefore, he did not apply for the same. After receipt of the notice, the petitioner has also applied for the above examination in December 2015. The petitioner attended the examination and has passed on 31.12.2015. The contention of the petitioner is subsequent pass in the Accounts Exam was not taken into account by the respondents.

4. The respondents filed a counter affidavit stating that the deceased petitioner was appointed on 04.01.1996 and passed the accounts test only on 30.12..2015, i.e., after completing 19 years of service in the post of Librarian Grade I. The first respondent directed the institutions to take action for recovery of excess payment to the Librarians who have not passed accounts test. The second respondent has issued a show cause notice. The deceased petitioner has submitted an explanation that there is no mention in the appointment order and the regularization order that he should pass the Accounts Test for subordinate Officer Part I. After the receipt of the notice, the deceased petitioner has applied for the above exam in December 2015.

5.The contention of the respondents is that the deceased petitioner submitted a representation addressed to the second respondent. In that, the deceased petitioner has informed that he has appeared for the departmental test in December 2015 and enclosed the



hall ticket and extracted the bulletin published in the TNPSC. The contention of the respondents is that the deceased petitioner applied for the Accounts Test during 2015 but, he did not inform whether he appeared and passed the exam. He was given annual increments from 01.01.1998 and he is not entitled to increments, without passing the Accounts Test. Hence, recovery is in accordance to law and the petitioner cannot have any grievance, since admittedly, he has not passed the accounts test from 1998 till 2015.

6. Heard Mr.F.Deepak, learned Counsel appearing for the petitioner and Mr.N.Ramesh Arumgam, learned Government Advocate appearing for the respondents.

7. On perusal of the papers, it is seen that the deceased petitioner, namely Manikandan has filed this Writ Petition in the year 2017 and he petitioner died on 07.09.2019. On perusal of the records, it is seen that he passed the Accounts Test on 30.12.2015. This is evident from the TNPSC bulletin, where, the list of registration numbers of passed candidates are published. The relevant portion of the list is extracted under:

"013550 MANIKANDAN B 11-17-6/1 RAMALINGA NAGAR S.
ALANGULAM MADURAI PINCODE:625 017"

8. Therefore, it is clear that the deceased petitioner passed the departmental test. On perusing the Rule 4-10, it has been stated as under:

"10. Any person appointed as Librarian or Assistant Librarian must pass the Accounts Test for Subordinate Officers Part I, within the period of probation or within a period of two years from the date of joining duty failing which his increment shall be cut without cumulative effect, until he has passed the test."

The respondents are under the impression that the deceased petitioner has applied for the Accounts Test and he has not stated whether he has passed the test or not. Therefore, the respondents issued the recovery order.

9. On perusing the list of candidates, who have passed the Accounts Test, it is seen that the deceased petitioner has passed the Accounts Test. Applying Rule 4-10, the deceased petitioner is not eligible for annual increments **until he passes the test**. Since he has passed the test, he is eligible for all the increments, which would be dated back to his probation period. If that is so, the impugned recovery order cannot be valid and hence, this Court is of the considered opinion that the impugned order is set aside and the recovery cannot be made by the respondents. Since the petitioner died, the other terminal benefits and monetary benefits, if it is available, the same shall be disbursed to the legal heirs of the



petitioner. The said exercise shall be completed within a period of two months.

10. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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

2. The Dean,
Madurai Medical College,
Madurai - 20.

+1 CC to M/s.F.DEEPAK, Advocate (SR-12398[F] dated 16/03/2022)

+1 CC to M/s.SPL GP (SR-12477[F] dated 16/03/2022)

W.P. (MD)No.2929 of 2017
15.03.2022

RK(01/04/2022) 4P 5C