



W.P.(MD)No.28037 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.28037 of 2022

and

W.M.P.(MD)No.22114 of 2022

Dr.S.Muthukumar

... Petitioner

Vs.

1. The Principal Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai – 600 009.
2. The Director of Medical and Rural Health Services (ESIS),
Thenampet, Chennai – 600 006.
3. The Regional Administrative Medical Officer,
Office of the Regional Administrative Medical Officer,
E.S.I. Campus, K.K. Nagar,
Madurai – 20.
4. The Incharge Medical Officer,
E.S.I. Dispensary, Rajapalayam,
Virudhunagar District.

... Respondents



W.P.(MD)No.28037 of 2022

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records connected with the Impugned Order of Recovery of Rs.88,000/- passed by the 4th respondent in Na.Ka.No.486/Ni.1/19 dated 25.11.2022 and quash the same and consequently direct the 4th respondent to refund the already recovered amount of Rs.17,600/- and to continue to pay the Non-practicing allowance.

For Petitioners : Mr. S.Govindan
For Respondents : Mr. S.P.Maharajan
Special Government Pleader

ORDER

This Writ Petition has been filed to call for the records pertaining to the impugned order of recovery of Rs.88,000/- passed by the 4th respondent in Na.Ka.No.486/Ni.1/19 dated 25.11.2022, quash the same and direct the 4th respondent to refund the already recovered amount of Rs. 17,600/- and to continue to pay the non-practicing allowance.



W.P.(MD)No.28037 of 2022

WEB COPY

2. The learned counsel appearing for the petitioner submits that the petitioner is working as Assistant Medical Officer in the 4th respondent hospital and the petitioner has received a sum of Rs.1,200/- as non-practicing allowance per month from 01.08.2015 to 30.06.2018. Based on the audit objection, earlier the respondents have passed the recovery order, dated 17.07.2019. Challenging the said recovery order, the petitioner has filed a writ petition before this Court in W.P(MD).No.19807 of 2019. This Court, vide its order, dated 14.02.2022, quashed the recovery order and directed the respondents to issue show cause notice to the petitioner within a period of four weeks from the date of receipt of a copy of the order and on receipt of show cause notice, the petitioner was directed to submit his reply/objection along with the documents, if any, within a period of two weeks from the date of receipt of the show cause notice and thereafter, the respondents were directed to consider the same and pass a speaking order assigning reasons. When there is a categorical direction issued by this Court, again without issuing any show cause notice and without assigning any reason, the fourth respondent has passed the impugned order



W.P.(MD)No.28037 of 2022

re-producing the earlier order in the impugned order which is not sustainable one. Accordingly, he prays for allowing the writ petition.

3. The learned Special Government Pleader appearing for the respondents would submit that since this Court has already held that after issuing a show cause notice to the petitioner, the respondents have to pass a speaking order, this Court may set aside the impugned order and remand the matter back to the Competent Authority for complying with the directions already issued by this Court in the earlier writ petition.

4. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

5. The facts in the present case are not in dispute. Admittedly, the petitioner has received non-practicing allowance from 01.08.2015 to 30.06.2018, for which, earlier recovery order was passed by the fourth respondent on 26.08.2019 and the same was challenged before this Court by the petitioner in W.P(MD).No.19807 of 2019. This Court has also set aside



W.P.(MD)No.28037 of 2022

the recovery order on the sole ground of violation of the principles of natural justice and without issuing the show cause notice. However, a perusal of the impugned order did not reveal the compliance of the order of this Court which is in violation of the principles of natural justice and the impugned order has been issued without issuing the show cause notice. Hence, the impugned order passed by the 4th respondent in Na.Ka.No. 486/Ni.1/19 dated 25.11.2022 is set aside and the matter is remanded back to the second respondent for fresh consideration.

6. Accordingly, the second respondent is directed to issue a show cause notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the petitioner is directed to submit his reply/objection along with the documents, if any, within a period of two weeks therefrom and the second respondent is directed to pass appropriate orders on merits and in accordance with law within a period of six weeks thereafter.



W.P.(MD)No.28037 of 2022

WEB COPY

7. Accordingly, this Writ Petition is allowed as above. No costs.

Connected miscellaneous petition is closed.

14.12.2022

Index : Yes / No

Speaking Order : Yes / No

ssb

To

1. The Principal Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai – 600 009.
2. The Director of Medical and Rural Health Services (ESIS),
Thenampet, Chennai – 600 006.
3. The Regional Administrative Medical Officer,
Office of the Regional Administrative Medical Officer,
E.S.I. Campus, K.K. Nagar,
Madurai – 20.
4. The Incharge Medical Officer,
E.S.I. Dispensary, Rajapalayam,
Virudhunagar District.



WEB COPY



W.P.(MD)No.28037 of 2022

M.DHANDAPANI,J.

ssb

**W.P.(MD)No.28037 of 2022
and
W.M.P.(MD)No.22114 of 2022**

14.12.2022