



W.P.(MD)No.28301 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.28301 of 2022

and

W.M.P.(MD)No.22342 of 2022

S.Karthick,
Assistant Medical Officer (Sidha),
E.S.I.Dispensary, Nagal Nagar,
Dindigul-3.

... Petitioner

Vs.

1. The Principal Secretary to Government
Labour and Employment Department,
Secretariat, Chennai-9.
2. The Director of Medical and
Rural Health Services (ESIS)
Thenampet, Chennai- 6.
3. The Regional Administrative Medical Officer
Office of the Regional Administrative Medical Officer,
E.S.I.Campus,
K.K.Nagar, Madurai-20.



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4. The Incharge Medical Officer
E.S.I. Dispensary, Nagal Nagar,
Dindigul.

... Respondents

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.1,93,400/- for the period from February 2014 till June 2022 passed by the 4th respondent in Na.Ka.No. 876/Ni./2022 dated 04.12.2022 and quash the same and consequently direct the 4th respondent to continue to pay the Non-Practicing allowance.

For Petitioner	:	Mr. S.Govindan
For Respondents	:	M/S. K.Christy Theboral Additional Government Pleader For R1 to R4

ORDER

This Writ Petition has been filed to call for the records pertaining to the impugned order of recovery of Rs.1,93,400/- for the period from the month of February 2014 till June 2022 passed by the 4th respondent in



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Na.Ka.No.876/Ni./2022 dated 04.12.2022, quash the same and consequently direct the 4th respondent to continue to pay the Non-Practicing allowance.

2. The case of the petitioner is that the petitioner has studied B.S.M.S(Siddha) and joined as Assistant Medical Officer (Siddha) on 18.10.2020. The second respondent had sent a proposal for opening of Siddha Unit at 10, E.S.I Dispensaries in Tamil Nadu to the 1st respondent and had also sent details of expenditure for each dispensary. In the proposal sent by the second respondent to the 1st respondent, it is stated that the Assistant Medical Officers (Siddha) are entitled to receive the Non-practicing allowance of Rs.1,200/- per month for which approval was also granted by the 1st respondent. In fact, non-practicing allowance is not granted to the Medical Officers, who are working in other hospitals as they are not entitled to receive the same. The petitioner has not practiced anywhere except the government hospital and he is receiving non-practicing allowance of Rs.1,200/-.



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3. While so, the third respondent vide its letter dated 26.08.2019, had sent a communication to the 4th respondent to take steps for recovery of non-practicing allowance already paid to the Assistant Medical Officers (Siddha) on the ground of audit objection. Based on the letter of the 3rd respondent, the 4th respondent by proceedings dated 04.09.2019 had taken steps for recovery of non-practicing allowance paid to the petitioner for the period from February 2014 till September 2019 and to stop the payment of Non-practicing allowance. Challenging the said proceedings, the petitioner has filed a writ petition in W.P(MD).No.19806 of 2019. This Court, vide its order dated 14.02.2022, issued a direction to the respondents to issue show cause notice to the petitioners within a period of four weeks from the date of receipt of a copy of the order and on receipt of the show cause notice, the petitioners were directed to submit their 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 the respondents were directed to consider the reply/objection if any submitted by the petitioners and pass a speaking order assigning reasons. However, without complying the directions of this Court, the very same order has been re-produced in the impugned order.



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Challenging the same, the present writ petition has been filed.

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4. 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, the respondents have to pass the order, this Court may set aside the impugned order and remand the matter back to the competent authority for complying the order passed in the said writ petition.

5. The facts in the present case are not in dispute. Admittedly, the petitioner is working as Assistant Medical Officer (Siddha). As per the proposal sent by the 2nd respondent to the 1st respondent, the Assistant Medical Officers (Siddha) are entitled to receive the non-practicing allowance of Rs.1,200/- per month which was approved by the 1st respondent. However, based on the audit objection raised by the 3rd respondent, the 4th respondent has passed the recovery order on 04.09.2019 and stopped the payment of non-practicing allowance. Challenging the same, the petitioner has also filed a writ petition before this Court in W.P(MD).No.19806 of 2019. This Court has also set aside the recovery



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order on the ground of violation of 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.876/Ni.1/2022 dated 04.12.2022 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.



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

Connected miscellaneous petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

ssb

To

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M.DHANDAPANI,J.

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