

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.11072 of 2007
and
M.P.No.1 of 2009

Order Reserved on 25.08.2014 Judgment Pronounced on
30.11.2015

Dr.D.Rajamanickam
Formerly Civil Asst. Surgeon, Govt. Hospital,
Karur 639 001, Karur District,
(formerly Primary Health Centre
Krishnarayapuram) ... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by Commissioner and Secretary,
Health and Family Welfare Dept.,
Fort St. George, Chennai-9.
- 2.The Director of Public Health and Preventive Medicine,
Chennai - 600 006
- 3.The Director of Medical and Rural Health Service,
Chennai-600 006.
- 4.The Deputy Director of Medical and Rural Health Service
and Family Welfare, Trichy-1,
(Formerly District Family Welfare and
Maternity Child Health Officer, Trichy-1).
- 5.The Commissioner of Tribunal
for Disciplinary Proceedings,
Coimbatore. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the entire records in connection with the impugned order of the first respondent in G.O.(D) No.729 Health and Family Welfare (D1) Department dated 3.8.2006, quash the same and consequently direct the respondents to confer all the terminal benefits including backwages pension etc., to the Petitioner by treating the period of suspension as one of duty.

For Petitioner : Mr.M.Venkatachalapathy(SC)
for M.Sriram

For Respondents: Mr.M.S.Ramesh
Additional Government Pleader

O R D E R

The short facts of the case are as follows:

The petitioner has submitted that he had completed his degree in MBBS in the year 1968, joined the service as Medical Officer in the Tamil Nadu Medical Service in 1968. He has served as Medical Officer in Primary Health Centre, Krishnarayapuram, Karur District, formerly in Trichy District. The service of the petitioner has been meritorious throughout. While he was serving as Assistant Surgeon in the Primary Health Centre, Krishnarayapuram, formerly in Trichy District, his immediate superior, Dr.David who was working as District Family Welfare and Maternity Child Health Officer, Trichy was inimical towards him. A Family Planning program was organized in 3 centers viz., Ammapalayam, Thiruvarangulam and Krishnarayapuram. Due to minor misunderstanding, in the presence of the public and the Panchayat Officials, Dr.David threatened the petitioner that he would be sacked from the job with disgrace and his whole career will be ruined.

2.Further, he has submitted that the District Collector, Trichy fixed a target of 700 family planning operations for Krishnarayapuram Block. After the intensive campaign was completed, as many as 672 vasectomy operations were performed in the block. But the petitioner's immediate superior, Dr.David as a vindictive measure, constituted an evaluation team for total evaluation of the work done in all the 3 centers. Under the instructions of Dr.David, PW16 Thiru.Asaithambi, the team leader headed the evaluation. They prepared false and fabricated evaluation report against the petitioner. Based on the report, Dr.David sent a report making false allegation against the petitioner and in order to bring the vigilance and anti-

corruption department into the picture, the allegation of impersonation and cheating was made as if the petitioner without performing operations has misappropriated the funds of the Government. It is submitted that based on the report, the officials of the Vigilance and Anti-corruption Department investigated the case and found that the acceptors were paid the honorarium amount directly by the Panchayat Union Commissioner in the presence of the motivator and the doctor who performs vasectomy operation has no role to play in the disbursement of the incentives to the acceptors and motivators. It was revealed that the acceptors were brought by the motivator and the entire particulars mentioned in the application form were based on the instructions given by the acceptors and the Medical Officer has no role to play in the particulars mentioned in the respective application forms signed by the acceptors.

3. He has further submitted that as per the evaluation report submitted by PW16, Asaithambi, out of the 3 centers, he has found out 300 untraceable and 109 ineligible cases in Krishnarayapuram Centre. But at the same time, there are 164 ineligible cases and 624 untraceable cases were in Thiruvarangulam center and 206 ineligible cases in Ammapalayam center. As per the evaluation report of PW16, the doctor who operates is responsible to find out the physical fitness, mental fitness and age of the acceptor. The age is fixed only based on the physical appearance of the acceptors. The motivator who brings the person is responsible for the address, marital status, unmarried, wife deceased and wife already undergone tubectomy operation. Hence the Medical Officer who operated the acceptor cannot be held responsible. Even as per the Government order, in all cases where the address of the acceptor is not traceable, the amount paid to the acceptor and motivator has to be recovered only from the motivator. In a family planning camp, the Medical Officer, whenever any person is brought for operation, verifies the contents of the application form and thereafter performs the operation. The incentive is paid by the Panchayat Union Commissioner and the Medical Officer has no role to play. In spite of a large number of ineligible and untraceable cases found in the other centers, viz., Thiruvarangulam and Ammapalayam, the Medical Officers who performed the operation were spared, but the petitioner alone was proceeded with departmentally for false allegations, purely by the vindictive action of Dr. David, who had personal animosity against the petitioner for the sole reason that the petitioner refused to sign the acquaintance register, where the disbursement of the incentive to the acceptors was secured by them. Incentive amount has been paid by the Panchayat Union Commissioner but the Petitioner was directed to sign all the registers and payment vouchers as if the incentive amount was paid in his presence.

4.Further, he has submitted that following the report, no evidence of misappropriation and cheating, was found and no criminal action was taken against the petitioner. He was issued with a charge memo under rule 17(b) of TNCS (D&A) Rules containing 5 charges on 27.05.1980 by the District Family Welfare and Maternity Child Health Officer, Trichy. The said charge memo was served on the petitioner on 30.08.1980. The petitioner after acknowledging the charge memo denied the charges. The Regional Assistant Director (PH & PM) Trichy was appointed as the Enquiry Officer to conduct the oral enquiry before whom on the side of the prosecution as many as 15 witnesses were examined and only one of them has deposed against the petitioner. Those witnesses were not treated as hostile by the enquiry officer and their previous statements recorded by Vigilance and Anti-Corruption Department were not marked. After sensing that there is no evidence against the petitioner, based on the report of the District Officer, the Government was addressed and an order was issued by the Government in letter No.97834/I/80-25/Health and Family Welfare Department dated 15.09.1983, under rule 17(A) of TNCS (CCA) Rules, and the oral enquiry pending before the Regional Assistant Director of Public Health and Preventive Medicine, Trichy was transferred to the file of the Commissioner for Disciplinary Proceedings, Madras on 25.03.1984. It is highly unfortunate that the transfer of the case after completion of the oral enquiry before the Enquiry Officer to the Commissioner for Disciplinary Proceedings, Chennai is highly illegal, irregular and unsustainable in law. The oral enquiry conducted by the departmental officer was not in favour of them and hence it was transferred to the CDP, Madras which amounts to second enquiry on the same set of allegations which is impermissible under law.

5.He has further submitted that in the meanwhile the petitioner was suspended from service on 31.03.1978, and the petitioner was placed before the Tribunal for Disciplinary Proceedings in TPD enquiry No.28/88 (DE No.37/83) of TDP, Madras by the order stated supra. Initially it was entrusted to CDP Chennai and later on it was transferred to CDP, Coimbatore. The charges framed against the petitioner by the District Family Welfare and Maternity Child Health Officer, Trichy under Rule 17 (b) of TNCS (D&A) Rules, read as follows:

CHARGE I:

That he had issued false certificates to Motivators for vasectomy / operation in respect of the following persons without actually doing the Vasectomy operation by abusing his position as a Medical Officer and claimed remuneration from the Government.

- 1.Vairaperumal
- 2.Shanmugam
- 3.Sengapillai
- 4.Sakthi

5.Ponnusamy

6.Omandhu

CHARGE-2:

That he has created bogus records for vasectomy operation and wantonly declared in the application forms and operation registers of the Primary Health Centre, Krishnarayapuram that he has performed vasectomy operation on persons without actually doing so.

CHARGE-3:

That he had declared, without any devotion to duty and moral rectitude, that he had performed vasectomy operation on 672 persons of whom 300 could not be treated or not available in the addresses mentioned in the case cards and 109 found to be ineligible for the operation.

CHARGE-4:

That he (Accused Officer) had performed vasectomy operations to the following ineligible persons who have crossed the reproductive age:

- 1.Thiru.Malayalam S/o. Sannasi age 60 years
- 2.Thiru.Gopala Asariar S/o. Muthusamy age 65 years
- 3.Thiru.Arumugham S/o. Ammasi age 65 years.

CHARGE-5:

That he (Accused Officer) had caused unnecessary pecuniary loss to the Government by way of payment of compensatory amount to acceptors and honorarium to motivators.

6.He has further submitted that after the oral enquiry proceedings were transferred to CDP, Madras, no fresh charge memo was issued to the petitioner but the earlier charge memo which has been served by the departmental officer on 27.05.1980 was proceeded with. There was no progress for a period of 6 years and the first hearing of the enquiry was conducted on 07.02.1986. On the side of the prosecution, 15 witnesses were again examined, PW16 Asaithambi was examined and 30 exhibits were marked. On the side of the defense, the petitioner examined 8 witnesses and marked 24 documents. The final hearing was conducted on 20.12.1988. The enquiry officer who conducted the enquiry has submitted a report on 07.01.1989 holding that all the charges against the petitioner have not been substantiated beyond reasonable doubt and further directed to drop action against the petitioner. During that relevant time, one Thiru.R.M.Sundara Raj, I.A.S. was the Commissioner for TDP, Coimbatore.

7.Further, he has submitted that after the petitioner was suspended from service on 31.03.1978, the respondent did not review the order. After the Tribunals for disciplinary proceedings submitted a report on 07.01.1989, holding that the charges against the petitioner has not been proved, he was

reinstated into service after a lapse of 13 years on 13.05.1991 and posted to work in the Government Hospital, Virudhunagar. There was no progress after receipt of the TDP report by the Government from 07.01.1989. The petitioner made two representations to complete the disciplinary proceedings and exonerate him from the charges.

8.He has further submitted that even after two years, there was no response. But the petitioner received a letter No.8558/12/87/31 dated 22.04.1991 from the respondent disagreeing with the report of the Commissioner for disciplinary proceedings, Coimbatore in respect of the charges and held that the charges 2, 3 and 5 have been proved against him and directed the petitioner to submit his reply. The respondent, while disagreeing with the views of the enquiry officer's report; did not go into the evidence but has relied upon extraneous matters and come to the conclusion that the charges 2, 3 and 5 have been proved for the only reason that the evaluation report of the PW16 contains 300 untraceable cases and 109 ineligible cases. As stated earlier the petitioner cannot be held responsible if the address mentioned in the application form submitted by the acceptor contains untraceable evidence since it is prepared only by the motivators on the information furnished by the acceptors. The ineligible candidates cannot be identified by the doctor in view of the fact that the doctor is not the field officer to ascertain the truth regarding the separation from wife, unmarried, wife expired, wife already operated.

9.Further, he has submitted a detailed reply on 20.07.1991 and even after a lapse of 1½ years, there was no response and no final orders have been passed. Then the petitioner approached the Tamil Nadu Administrative Tribunal in OA.No.4954 of 1992 challenging the disagreeing minute issued by the respondents dated 22.04.1991 on various grounds. The Tribunal at the time of admission was pleased to grant stay of the show cause notice which was extended until further orders. The respondent did not take any steps to vacate the stay granted by the Tribunal. In the meanwhile, the petitioner became due for superannuation on 30.09.1997, but he was suspended and not allowed to retire from service by the orders of the Government on 30.09.1997.

10.He has further submitted that the Tribunal by an order, dated 15.12.2003, was pleased to dismiss the O.A. filed by the petitioner and directed the petitioner to raise all the points which he has raised before the Tribunal and also urge before the Government for dropping all the three charges and in case of final orders, which have been passed against the petitioner, he can challenge the same. The Tribunal directed the Government to pass final orders within a period of twelve weeks from the date of order.

11.Further, he has submitted that the respondent did not comply with the time limit fixed by the Tribunal while passing final order in the original application on 15.12.2003. The petitioner made representations to the respondents in person to pass orders at an early date. Now after a lapse of three years from the date of the order passed by the Tribunal on 15.12.2003, the respondent has issued an order in 06.12.2006 disagreeing with the explanation submitted by the petitioner for dissenting minute of the Government and holding that the charge Nos.2, 3 and 5 have been proved and for the proved delinquency imposed a punishment of removal from service.

12.He has further submitted that the impugned order passed by the respondent is unjust, illegal, irregular and unsustainable in law. For an alleged delinquency which was said to have taken place in the year 1975, a charge memo came to be issued in 1980, the enquiry commenced in 1986 and completed in 1988, dissenting minute issued in 1991 and final orders have been passed in 2006. There is delay in each and every stage of the disciplinary proceedings and the same has not been explained. Moreover, there is absolutely no proof of acceptable evidence that the petitioner has committed the delinquency. The CDP, Coimbatore in his report dated 07.01.1989 has considered all the points and held that the allegation against the petitioner has not been proved. The reason mentioned by the respondent while disagreeing with the view of the TDP cannot be accepted and is without any basis. The respondent has taken into consideration extraneous reasons for which there is no evidence and on that basis he has held that the charges have been proved. The respondent has failed to consider the fact that it was only a motivated action by Dr.David that the entire allegation against the petitioner has been made and the petitioner was made to suffer all along throughout his career. Furthermore, the punishment is imposed on the petitioner for a delinquency relating to the year 1975 and after a prolonged enquiry for nearly 30 years, he has been imposed with a major penalty of removal from service and thereby deprived the chance of his retirement benefits and as such the punishment is excessive, exorbitant and disproportionate to the nature of delinquency. The prosecution has not let in any evidence before the CDP, Coimbatore for the proof of the allegations that the petitioner is responsible for 300 untraceable cases and 109 ineligible cases. Hence, it is a case of no evidence against the petitioner and findings of the respondent are perverse and no punishment can be imposed on perverse findings. Hence the petitioner has no other alternative except approaching this Court for issue of writ of Certiorarified Mandamus seeking for a direction to call for the records of the respondent in connection with the impugned order and quash the same and direct the respondent to superannuate the petitioner from service and

grant him all consequential service and other monetary benefits. Hence, the writ petition has been filed.

13.The respondents have filed counter affidavit stating that Dr.D.Rajamanickam, formerly Medical Officer, Primary Health Centre, Krishnarayapuram, the petitioner herein was the Drawing and Disbursing Officer and also incharge of administrative control of the Primary Health Center from 12.04.1972 to 16.11.1975. During his service in the Primary Health Centre, number of irregularities were noticed in conducting Family Welfare Operations during the Family Welfare Campaign period in the year 1975. During the year 1975, the Collector of Tiruchirapalli announced the Family Welfare Drive period from 16.08.1975 to 30.09.1975 in his circular No.L1/13422/75 (D) dated 30.07.1975 and fixed the target of 350 cases for each Primary Health Centre and Panchayat Union.

14.They have further submitted that in connection with the above Family Welfare drive, the District Family Welfare and Maternal Child Health officers have issued guidelines. In the guidelines it has been clearly indicated that the Medical Officer, Primary Health Centre should not only check up the correctness of the entries in Part-I but also mention the identity and age of the acceptor in Part-II of the Register. He should specifically examine among other things, scar of old operation of the scrotum, continuity in the vas and presence of any nodule in the vas. He should not perform operation for the persons suffering from Hernia, Hydrosol, and Chronic disable, already vasectomy done persons, bachelors, widowers and old persons over 55 years. The Medical Officer should conduct the operation in the theatre for the persons on whom he had performed operation and also a rejection register for persons rejected by him with reasons. After the operation, the Medical Officer, should issue certificate of operation to the motivators who are other than the staff of the Primary Health Centre. Since the responsibility vested with the Medical Officer, no certificate of operation for the Primary Health Centre staff was considered necessary. Though the petitioner, Dr.D.Rajamanickam, the then Medical Officer, Primary Health Centre, Krishnarayapuram received the above guidelines, he had committed lot of malpractices wantonly with the intention of cheating the Government. Hence he was placed under suspension vide Proceedings R.No.47725/SC/1/78, dated 31.03.1978 by the fourth respondent herein.

15.Further, they have submitted that the charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 against the petitioner vide letter R.No.1546/A/80-1 dated 30.08.1980 by the fourth respondent herein. The then Regional Assistant Director, Thiruchirapalli has been nominated as Inquiry Officer in this

case. As he was insulted and disregarded too much by the delinquent officer at the time of hearing and found many difficulties to tackle the case, he had requested to take action to nominate some other officer as inquiry officer. Hence the fact was informed to the first respondent. As per the instructions of the first respondent in letter No.97834/12/80-35 dated 27.02.1984 (copy enclosed), the Regional Assistant Director of Public Health and Preventive Medicine, Trichy had sent all the records to the Commissioner for Disciplinary Proceedings, to proceed further in this disciplinary case. The fifth respondent herein had sent final report to the first respondent in Roc.1114/88/A4, dated 20.01.1989. On the basis of the report, the first respondent have examined this disciplinary case and imposed the punishment of removal from service vide G.O.(D)No.729, Health and Family Welfare Department, dated 03.08.2006 (copy enclosed).

16.They have further submitted that immediate superior of the petitioner Dr.David was working as District Family Welfare and Maternal Child Health Officer, Thiruchirapalli. On receipt of petition from one Thiru.M.Chandrasan, Karur regarding malpractice in Family Welfare Operation, the appropriate investigating authority had conducted a discreet enquiry into the contents of the petition against the petitioner. The Investigating Authority had substantiated the allegation against the petitioner with the proper documentary evidence and established a prima facie case and then proceeded with the case further.

17.Further, they have submitted that the petitioner had reported that during the drive period from 16.08.1975 to 30.09.1975, he had performed Vasectomy Operation on 672 persons. He had purchased medicines for more than Rs.3,000/- locally and requested for ratification for the above local purchase of medicine. The bills were split up not exceeding Rs.200/- at a time as the Medical Officer is empowered for the local purchase only upto Rs.200/-. As medicines were supplied from the Head Office for all Primary Health Centres during that period and in several Primary Health Centres, which had done almost equal number of operations like Krishnarayapuram Primary Health Centre, such a huge amount on extra medicines had not been incurred. Therefore, the Regional Assistant Director of Medical Services and Family Welfare, Tiruchirapalli, felt that the operation done by the petitioner should be dubious. Hence, he ordered to conduct survey and an evaluation study of the vasectomy operations performed in the Primary Health Centre, Krishnarayapuram. Thiru.S.Asaithambi, Statistical Assistant assisted by the Computers, conducted the survey and evaluated and finally submitted his report. In his survey report it has been pointed out that several irregularities like non-availability of parties in 300 cases, 109 in eligible cases,

etc., of the total of 531 cases taken up for study has been found. There is no justifiable reason for the total absence of such large, number of cases. The 109 ineligible persons said to have been operated includes very old persons who have crossed the reproductive age group. Because of this wanton malpractice by the petitioner a great drain in the Government Exchequer was caused.

18.They have further submitted that the Vigilance and Anti-Corruption department has also conducted discreet enquiries based on the complaints received from 35 persons. The report of the Vigilance and Anti-Corruption Department reveals lot of serious irregularities on the part of the petitioner. It reveals that during the intensive campaign period from 19.08.1975 to 31.10.1975, he abused his position as a Public Servant and had wantonly declared in the application forms and operation registers of the Primary Health Centre, that he had performed Vasectomy operations on persons including those who had already undergone vasectomies without actually doing so, issued false certificates of operations to motivators and claimed remuneration from the Government.

19.Further, they have submitted that during the above campaign period, with a view to achieve the target fixed for the Primary Health Centres and without any devotion to duty and moral rectitude, he had declared in the whole that they had performed vasectomy operation on 672 persons of whom 300 could not be traced or not available in the addresses mentioned in the case cards and 109 found to be ineligible for the operation. There were no valid reasons to justify for the total absence of such large number of persons like bachelors, widows, particularly persons who had crossed the reproductive age. The petitioner by such wanton irregularities had caused unnecessary pecuniary loss to the Government by way of payment of compensatory amount to acceptors and honorarium to motivators, brought adverse criticism and publicity to this national programme.

20.They have further submitted that during the campaign, the petitioner had committed certain irregularities. One unmarried person was taken by a broker, and he was promised that he would get Rs.30/- if he would agree for vasectomy operation. The broker took him to the Panchayat Union office and asked him to sign in the application forms. But the witness affixed his thumb impression only as he could not read and write. The application form was filled up by some persons of the Primary Health Centre, Krishnarayapuram. He was taken to the operation theatre, the petitioner was present in the theatre, but he did not perform any operation on him. He was then taken to adjoining room where he was paid Rs.60/- and his thumb impressions were taken from him in several registers. When he

came out, the broker took away from him Rs.30/- and gave him only Rs.30/-. He got married six months after this incident and has a child. He did not receive any tablets and nirodh from the centre. He was produced before the District Medical Officer, Tiruchirapalli on 15.02.1978 by Vigilance and Anti-Corruption Department to verify whether he was operated or not. The District Medical Officer, Trichy reports reveal that in this case there was no symptom of an operation conducted on him.

21.Further, they have submitted that a broker took Thiru.P.Shanmugam, s/o Palaniappan, Puliur - Cooly to Panchayat Union Office, Krishnarayapuram, promising to pay him Rs.20/- if he would be prepared for a vasectomy operation, even though he was not willing for the operation though he was married at that time. However, the broker took him to Panchayat Union Office, Krishnarayapuram and asked him to fill up the application forms, which he signed. The other details in the application form were filled up by some other staff. The broker assured him that he would not be operated but would be paid Rs.60/-. He was taken to the operation theatre where he saw the Doctor. He was then taken to an adjoining room by the staff and after some time he was paid Rs.60/- and his signatures were taken in the several registers. The petitioner did not perform any operation on him. The broker came to him and took away Rs.40/- from him leaving him with Rs.20/-. He was not given any tablets and Nirodh. Then he was taken to Headquarters Hospital, Trichy on 15.02.1978 and he was examined to know whether he underwent vasectomy or not. The Medical Opinion reveals that this case has no symptoms of an operation conducted on him.

22.They have further submitted that Thiru.Sanga Pillai s/o Maruthaieeran, Puraipalayam, Puliur is an agricultural coolly. He was unmarried. The broker promised him that he would get Rs.20/- if he would agree for vasectomy operation. But the broker took him to Panchayat Union Office, Krishnarayapuram and got his thumb impressions in an application form. He was taken to the adjoining room where he was paid Rs.60/- after obtaining his thumb impressions in the several registers. He was not operated at all. No medicines or nirodh were distributed to him. The broker took Rs.40/- from him out of Rs.60/- received by him from the Panchayat Union Office. He was taken to the Government Headquarters Hospital, Tiruchirappalli and was examined to find out whether he was operated for vasectomy or not. The medical reports reveal that this case has no symptoms of the operation conducted on him. When Thiru.D.Periannam Gramasevak Grade-I motivator was enquired, he stated that he did not know whether the person whom he motivated was actually operated or not. He admitted the signatures in the motivator's column in the application form of Shanmugham and Sangapillai. He has also stated that they were produced by the brokers and he did not know them personally. He gave to the brokers an amount

of Rs.20/- which was received by him as his honorarium for these 2 cases besides an amount of Rs.100/- to be paid to the Doctors as already agreed, at the rate of Rs.50/- per case.

23.Further, they have submitted that the petitioner had issued false medical certificates without conducting operation for the following persons as in the above said same method of cheating.

- a) Thiru.Omandu, s/o Nagappan, Melapalayam is an agricultural coolly. He is married and has 3 grown up sons and 2 daughters who are all married. He was already operated for vasectomy in the Primary Health Centre, Uppidamangalam about 9 years back.
- b) Thiru.Palani s/o Rengan, S.Vellalpatti is a cobbler. He has a son and 2 daughters who have come of age. He was previously operated for vasectomy in the Primary Health Centre, Uppidamangalam about 6 years ago on the recommendation of one Thiru.Muniappan, School Teacher, S.Vellalapatti. About 2½ years back while he was in search of work in Pulliyur, a broker took him to Panchayat Union Office, Krishnarayapuram promising him to get him Rs.20/- without being operated for vasectomy.
- c) Thiru.Gopala Asarior s/o Muthusamy, Veerarakkiam is aged about 65 years and having 3 sons and 3 daughters. His last child is a son now aged about 22 years. About 2½ years back when he was in Karur, a broker contacted him and asked that he would get Rs.60/- if he would come to the Primary Health Centre, Krishnarayapuram and undergo vasectomy operation. Witness agreed to do so because he was in adverse circumstances and in need of money to look after his domestic needs. He went to the Primary Health Centre, Krishnarayapuram with the broker the next day and signed an application form and was vasectomised. He got Rs.60/- for the operation and gave Rs.20/- to the broker from that money.

24.They have further submitted that Thiru.Arumugam s/o Amasi, Thirukkampauliyur is aged. His last child is a daughter now aged about 20 years and married. About 2 years ago, a broker asked him whether he would be willing for vasectomy operation and get Rs.60/- in the Primary Health Centre, Krishnarayapuram. Witness readily agreed and went with him to

the Primary Health Centre, Krishnarayapuram. The next day, he signed an application form and got himself operated. He received Rs.60/- for the operation and received Rs.20/- from the broker.

25.Further, they have submitted that the evidence of Vairaperumal, Shanmugham, Sangapillai and Sakthi is highly tenable and they have stated that they were not vasectomised at all. The District Medical Officer, Tiruchirapalli proves their version beyond doubt. The District Medical Officer, Tiruchirapalli, after a clinical and seminal examination has certified that they have not undergone bilateral vasectomy operations. The evidence of witnesses of above said Ponnusamy, Perumal, Omandu and Palani will also substantiate in as much as they have stated that they are not operated in the primary Health Centre, Krishnarayapuram by the petitioner. They have no reasons to utter a lie and have no ill will against the petitioner. The witnesses Karuppa Gounder, Arulsamy and Muniappan who were motivators have held that the above four persons have already been vasectomised in the Primary Health Centre, Uppidamangalam a year back which fact is also supported by documents.

26.They have further submitted that it has been recorded in the medicines distribution register that xclocaine/No vaccine had been expended on the above persons and no niroddh distributed to them. The petitioner had signed the registers for every person. The medicines could not be used on them when they were not actually operated. It is evidently clear that the expenditure of medicines shown in the records are false. He had claimed remunerations from the Government. Further it is seen that the procedure for conducting the vasectomy operations was not observed in conformity with the guidelines issued.

27.Further, they have submitted that from the above, it is clear that the petitioner had committed lot of illegal things with the motive to cheat the Government. Hence the charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 against the petitioner. He had submitted his defence statement against the charges framed.

28.They have further submitted that the Regional Assistant Director of Public Health and Preventive Medicine, Tiruchirapalli has been appointed as Inquiry Officer in this case. As he was insulted and disregarded too much by the delinquent officer, the petitioner, at the time of hearings and found much difficulties to tackle the case, he had requested to take action to nominate some other officer as Inquiry Officer as it puts him in a very critical position to proceed further with the inquiry. The fact was informed to the first respondent by the second respondent herein. As per the first respondent's

letter No.97834/12/80-35 dated 27.02.1984, the Regional Assistant Director of Public Health and Preventive Medicine, Tiruchirapalli had sent all the records to the fifth respondent herein to proceed further in this disciplinary case.

29.Further, they have submitted that the fifth respondent herein in his letter Roc.No.1114/88/A4 dated 28.02.1989 stated that the inquiry was completed and final report was sent to the first respondent herein. In the G.O.(D).No.729 dated 03.08.2006 (copy enclosed), the first respondent herein have imposed the punishment of removal from service on the petitioner. The petitioner had denied the allegation and submitted that the charge memo was issued on 31.08.1980 (copy enclosed) by the fourth respondent herein. In order to submit his defence statement against the charges framed, the petitioner herein asked various papers for perusal at several times. Accordingly he has been permitted to peruse the records but he was not satisfied even though his requests were complied with. Even though his request was complied, initially he had not submitted his defence statement, but submitted the questionnaire form alone, wherein he wanted to conduct the oral enquiry where all the prosecution witnesses are examined in his presence. In the meantime, the first respondent herein received the petition containing similar allegations against the petitioner herein from Thiru.Navulsamy. The first respondent in letter No.93039/W2/80-1, Health, dated 11.03.1981 has referred the matter to the Appropriate Investigating Authority for a detailed enquiry into the allegation against the petitioner herein. According to the instructions issued in the Government Memorandum No.568/62-1 Public (Services) Department, dated 17.11.1962, a case has been entrusted to the Investigating Authority for enquiry and report, as there should not be any parallel enquiry by the Head of the Department. Therefore the first respondent have requested the departmental investigations against the petitioner, ordered in the Government letter No.20967/D1/80-1, Health, dated 22.04.1980 may be stopped forthwith and all the connected records pertaining to the case might be entrusted to the Investigating Authority. The Regional Assistant Director of Public Health and Preventive Medicine, Thiruchirappalli had been nominated as Inquiry Officer to conduct the inquiry against him. The inquiry officer had examined whichever witness, the petitioner requested for. In spite of having inquired them, the petitioner always has been blaming and finding faults on the inquiry officer on various aspects. The petitioner had submitted a petition requesting to engage a lawyer Thiru.R.Arumugam Rathinam, to appear on his behalf to cross examine the witness in the enquiry and to be present throughout the enquiry till the completion of the inquiry. The petition for engaging a lawyer was allowed. The delay in pursuing action on the petitioner is purely due to administrative reasons only that are due to the voluminous

nature of work in respect of this and other cases of misappropriation.

30.They have further submitted that the Tamil Nadu Administrative Tribunal had passed orders (order copy enclosed) that the disciplinary proceedings have reached the final stage, when the applicant has put an obstruction and therefore the first respondent herein alone cannot be blamed. The disciplinary authority must be given a chance to come to its own conclusion and directed to pass final orders within a period of 12 weeks from this date.

31.Further, they have submitted that the Government had examined the findings of the fifth respondent herein and in deviation from the findings of the fifth respondent herein, the first respondent herein held charges 2, 3 and 5 framed against the petitioner as proved. The reasons for deviating from the findings of the fifth respondent herein were communicated to the petitioner vide Government Letter No.8558/12/87-31, dated 22.04.1991. The petitioner submitted his further representation on the deviated findings.

32.They have further submitted that the petitioner herein was not sure on assessing the age of the acceptors. His aim was to show maximum number of vasectomy operations and he had done this, without devoting much time on examining the eligibility factor. The first respondent herein had examined the charges framed, the defence statement, findings of the fifth respondent, further representation on the deviated decision of the first respondent from the findings of the fifth respondent, carefully and independently, checked with all the connected records, and held the charges 2, 3 and 5 as proved and charges 1 and 4 as not proved. For the proven charges, the Government have imposed the punishment of removal from service. Hence, the respondents have prayed to dismiss the writ petition.

33.The learned counsel appearing for the petitioner has submitted that the petitioner has joined service as a Medical Officer, in the Primary Health Centre, Krishnarayapuram, during 1968 and he has rendered a meritorious service. During 1975, family planning programmes were organized in three Centres, namely, Ammapalayam, Thiruvarangulam and Krishnarayapuram and in the said programme, the District Family Welfare and Maternity Child Health Officer, Dr.David had threatened him in the presence of the public and Panchayath officials due to some misunderstanding, which developed enmity between them. The petitioner has completed 672 vasectomy operations successfully. The Team Leader one Asaithambi had prepared a false and fabricated evaluation report against the petitioner and based on the said report, Dr.David sent a report making false allegations

in order to bring the Vigilance and Anti-corruption Department into the picture. The main allegations i.e. impersonation and cheating were made as if the petitioner, without performing operations, had misappropriated the Government funds.

34. The learned counsel has further submitted that the vasectomy patients had received rewards directly from the Commissioner, Panchayat Union, in the presence of motivators and the Doctors, who had performed vasectomy operation. Actually, the petitioner had no role to disburse the incentives to the acceptors and motivators. The motivators had brought the vasectomy patients for operation. The entire particulars had been mentioned by them in the prescribed application. As such, the petitioner had not cheated any vasectomy patients and misappropriated the Government funds. As per the report submitted by the Team Leader Asaithambi, it was found 300 untraceable and 109 ineligible cases in Krishnarayapuram Centre, 624 untraceable and 164 ineligible cases in Thiruvarangulam Centre and 206 ineligible cases in Ammapalayam Centre. Hence, the entire charges levelled against the petitioner herein, who had performed operation for vasectomy patients, are without any substantial proof. Actually, the motivators alone are responsible to give particulars viz., residential address, marital status etc. In view of the data obtained as mentioned above, the charges levelled against the petitioner are mala fide. As per the Government Order, if any irregularity is involved, the amount paid to the acceptor can be recovered from the motivators. As such, the petitioner had absolutely no role in the said allegations, since the particulars had been furnished by the motivators and vasectomy persons besides the incentives to such illegible awardees had been paid through the Panchayat Union Commissioner. In such circumstances, the charge-memo served on the petitioner is without application of mind. Subsequently, an Enquiry Officer was appointed, who conducted an enquiry and examined fifteen listed witnesses, out of them one witness had deposed against the petitioner. The rest of the witnesses had turned hostile. Hence, the allegations had not been proved beyond doubt. Therefore, the impugned order passed by the first respondent removing the petitioner from service, has no basis. Further, C.D.P., had submitted a report stating that the charges levelled against the petitioner had not been proved. The C.D.P., is also a competent authority, who conducted the final hearing and therefore the Commissioner for disciplinary proceedings cannot be ignored. Hence, the learned counsel has prayed this Court to set aside the impugned order passed by the first respondent.

35. The learned Additional Government Pleader appearing for the respondents has submitted that the petitioner had committed number of irregularities during his service in the Health Department especially in family welfare operations, which were

performed between 16.08.1975 and 30.09.1975. The Family Welfare Department had issued guidelines mentioning that the Medical Officer should not only check-up the correctness of the entries made in Part-I, but also mention the identity and age of the acceptor in Part-II of the register. Further, the petitioner should specifically examine the scar of old operation of the scrotum, continuity in the vas and presence of any nodule in the vas. Further, the petitioner should not perform operation for the persons, who are suffering from hernia, hydrosol and chronic disable, already vasectomy done persons, bachelors, widowers and persons aged above 55 years. After the operation, the Medical Officer should issue certificates of operation to the motivators, who are other than the staff of the Primary Centre. The petitioner, after understanding the guidelines, had committed various malpractices with mala fide intention. Therefore, he was placed under suspension on 31.03.1978. Subsequently, the fourth respondent had been appointed as an Enquiry Officer. Thereafter, on the request of the petitioner, the fifth respondent had been appointed as Enquiry Officer. The fifth respondent had conducted a comprehensive enquiry and submitted a final report. On the basis of the said final report, the petitioner was imposed with punishment of removal from service.

36. Further, the learned Additional Government Pleader has submitted that one Chandrahasan made a complaint regarding malpractice of the petitioner and based on the said complaint, a discreet enquiry was conducted by the Investigating Officer. Furthermore, the petitioner had purchased medicines for more than Rs.3,000/-, actually the Medical Officer is empowered to obtain medicines to the cost of Rs.200/- only. As such, the petitioner had committed misappropriation of funds and cheating. Though one Asaithambi, a Statistical Assistant, conducted a survey and submitted a report stating that the petitioner had committed several irregularities like non-availability of parties in 300 cases, 109 ineligible cases, etc., of the total of 531 cases taken up for study. Those 109 ineligible persons, who were said to have been operated, were aged persons, who have crossed the reproductive age group, besides, the Anti-Corruption Department had also conducted an enquiry on the complaints from 35 persons stating that the petitioner had committed several serious irregularities during the intensive campaign period. Further, the petitioner had performed vasectomy operations for those, who had already undergone vasectomy operations and issued false certificates of operation to motivators and claimed reward from the Government. Further, the vasectomy operations were conducted on 672 persons, out of them 300 persons could not be traced out and not available in the address mentioned in the case records and 109 persons, who were found to be ineligible for the operation. As such, the petitioner had caused unnecessary pecuniary loss to the Government for his personal

gain. Further, one unmarried person was taken to the operation theatre, but the petitioner had not performed operation for him, however that person was paid Rs.60/- after obtaining his signature in the medical register. The same was confirmed by the Anti-corruption Department and the District Medical Officer. Likewise, one Shanmugam was paid a sum of Rs.60/- after obtaining his signatures in several registers. Out of the said amount, a sum of Rs.40/- had been taken by the broker. Subsequently, the said Shanmugam was taken to the Government Headquarters Hospital, Trichy, wherein he was examined and found that no vasectomy operation was performed. Another, unmarried person one S.Pillai was taken to the Operation Theatre, wherein he had signed in the register and was paid Rs.60/-, without performing any operation. The same was confirmed through medical examination. Further, the petitioner had issued false medical certificates to some other persons, namely, Omandu, Palani, Gopala Asarior and Arumugam, without conducting vasectomy operations.

37.The learned Additional Government Pleader has further submitted that the allegations levelled against the petitioner had been proved at the time of the enquiry through oral and documentary evidence. Therefore, five charges were framed and the same were established after a comprehensive enquiry. Hence, the learned counsel has prayed this Court to dismiss the writ petition.

38.Considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that as per documentary proof six persons have been issued with false certificates without performing the vasectomy operations. Further, the petitioner, without following the guidelines, performed vasectomy operations for three persons, who had crossed 55 years. Hence, it is seen that the petitioner had violated the medical guidelines. Further, the address of 300 persons were not available, besides 109 persons were found to be ineligible for vasectomy operations. Therefore, the charges levelled against the petitioner were not by theory or their own opinion, but the irregularities were found against physical verification and documentary proof, which are being maintained at the operation theatre. In such circumstances, the writ petition does not possess sufficient firm grounds for allowing it.

39.In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vs / krk

To:

- 1.The Commissioner and Secretary,
Health and Family Welfare Dept.,
State of Tamil Nadu,
Fort St. George, Chennai-9.
- 2.The Director of Public Health and
Preventive Medicine,
Chennai - 600 006.
- 3.The Director of Medical and Rural Health Service,
Chennai-600 006.
- 4.The Deputy Director of Medical and
Rural Health Service, and Family Welfare,
Trichy-1,
(Formerly District Family Welfare and
Maternity Child Health Officer, Trichy-1).
- 5.The Commissioner of Tribunal
for Disciplinary Proceedings,
Coimbatore.

+1 cc to Mr.M.Sriram, Advocate vide sr.65329

W.P.No.11072 of 2007
and
M.P.No.1 of 2009

aa17/12/2015