

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 11698 OF 2006

and

W.P.M.P. No. 13287 of 2006

Dr. M. Banumathy

..

Petitioner

Vs.

1. The Director of Medical & Rural
Health Services
Teynampet, Chennai - 6.

2. The Joint Director of Medical &
Rural Health Services
Welfare Department
Perambalur.

3. The Chief Medical Officer
Government General Hospital
Jayamkondan,
Perambalur - 621 802.

.. Respondents

PRAYER: This Writ petition is filed under Article 226 of Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent dated 27.03.2006 made in proceedings Ref. No. 6033/SC2/3/2006 which was received by the petitioner on 10.04.2006 and quash the same as illegal unlawful and without jurisdiction against the Principles of natural justice ultra vires tainted with malafides and consequently forbear the respondents from in any manner interfering with the petitioner peaceful discharge of her functions in the office of the 3rd respondent and pass further orders.

For Petitioner : Mr. T.S. Rajamohan

For Respondents : Mrs. M.E. Raniselvam, AGP

O R D E R

This Writ petition has been directed against the impugned charge memo dated 27.03.2006 issued under Rule 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules, with three charges.

2. The main issue in the charge memo says that the petitioner while serving as an Assistant Surgeon in Government Hospital, Jayankondam, Perambalur District, has wrongly informed Mr. S. Selvakumar, Husband of Tmt. Sudha Selvakumar, a patient admitted for Caesarian at Government Hospital, Jayamkondam on 01.03.2005 that there was no facility at Government Hospital for doing caesarian, while a caesarian operation has been done at the above hospital as per news published in the newspaper. Thus she violated Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules. The second charge alleges that the petitioner induced Tmt. Sudha to go to Ezhil Private Nursing Home, Jayankondam by paying an amount of Rs.9500/- for her personal benefit in violation of Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules. And the third charge alleges that instead of giving proper reply to the memo dated 15.06.2005, she has criticized the Joint Director of Health Services, Perambalur and thus she has been insubordinate to the higher authority.

3. Learned counsel appearing for the petitioner would submit that before giving the present charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the basis of the written complaint given by Mr. S. Selvakumar, Husband of Mrs. Sudha, the petitioner was issued with a show cause notice with a set of 7 questions, with the same charges along with four more charges for which the petitioner submitted her explanation on 20.06.2005 denying all the charges, specifically mentioning, eventhough the said patient was admitted on 01.03.2005 the Pulse Oxymeter which is used for injecting anesthesia was not in working condition. That apart, even Dr. Anees Fathima, Anesthetist from a private hospital, whose services was requested by the third respondent, refused to inject anesthesia in the absence of the Pulse Oxymeter. In view of the said situation, the patient Tmt. Sudha Selvakumar who was in an advanced stage of pregnancy, coming to know that Caesarian could not be performed to her, she herself had opted for discharge and on her own request the patient left the Government Hospital, with no other alternative. In view of that, the petitioner had to discharge her in the interest of the patient. Therefore, such a conduct on the part of the petitioner will not amount to lethargic duty. With regard to the second charge, it was further explained by the petitioner that there was no any question of inducing Tmt. Sudha to get herself admitted in Ezhil Hospital, Jayamkondan since no such allegation has been made by the patient in her petition dated 28.03.2005.

Therefore, the said charge also cannot stand. Similarly, all the allegations have been explained properly.

4. In the meanwhile, the complaint filed before the State Human Rights Commission, Tamil Nadu was also withdrawn by the complainant in SHRC Case No.1264 of 2006 and 4374 of 2009 and hence the said complaint was closed. Subsequently, the husband of the patient Mr. S. Selvakumar also sent a letter dated 20.05.2010 addressing to the Joint Director of Public Health Services, Perambalur requesting the Joint Director not to proceed with the complaint as he had decided to withdraw the same, since he has made the complaint as he became emotional on the date when his wife was admitted in the hospital. Therefore, when the complaint given by the patient's husband Mr. S. Selvakumar before the State Human Rights Commission, Tamil Nadu was closed on the basis of his request to withdraw his petition and subsequently, the said Mr. S. Selvakumar also had made a written request dated 20.05.2010 withdrawing the previous written complaint, the charges found in the impugned charge memo cannot stand to legal scrutiny, he pleaded.

5. It is further submitted by the learned counsel appearing for the petitioner that even if this Court persist upon the petitioner to submit his explanation to the said charge memo, no purpose would be served as the complainant and his wife Tmt. Sudha had already withdrawn the complaint and they would not be participating in the enquiry proceedings and hence that would only become an empty formality. As a result, the disciplinary authority would not be in a position to take any decision. Concluding his argument, learned counsel would further submit that when the two documents, namely, the order dated 08.02.2011 passed by the State Human Rights Commission, Tamilnadu closing the complaint on the basis of the request of the complainant to withdraw the petition and the withdrawal letter dated 20.05.2010 submitted by Mr. S. Selvakumar clearly go to show that the charge memo issued pursuant to the written complaint made by Mr. S. Selvakumar has automatically become infructuous, nothing survives in the impugned charge memo, hence the same is liable to be quashed.

6. Although a detailed counter affidavit has been filed in the month of July 2006, the two subsequent events taken place namely, the withdrawal letter dated 20.05.2010 given by Mr. S. Selvakumar and the closure of the complaint by the State Human Rights Commission on 08.02.2011 permitting the complainant Mr. S. Selvakumar to withdraw his petition, clearly show that all the charges made against the petitioner on the basis of the complaint given by Mr. S. Selvakumar cannot be legally maintainable. The impugned charge memo was issued against the petitioner on the basis of a complaint given by Mr. S. Selvakumar, now the said complainant

himself had withdrawn his complaint, therefore the impugned charge memo itself will automatically fall to ground. In view of the above, this Court has no hesitation to allow this Writ Petition, by quashing the impugned charge memo.

7. Accordingly, the Writ Petition stands allowed and the impugned charge memo stands quashed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

Sd/-
Asst.Registrar (Records)

/true copy/

Sub Asst. Registrar

avr

To

1. The Director of Medical & Rural
Health Services
Teynampet, Chennai - 6.
2. The Joint Director of Medical &
Rural Health Services
Welfare Department
Perambalur.
3. The Chief Medical Officer
Government General Hospital
Jayamkondan,
Perambalur - 621 802.

2 cs to mr.T.S. Rajamohan, Advocate, sr. 7962

1 cc to Government Pleader, sr. 7885

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