

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.1472 of 2015
and Writ Petition No.2890 of 2015
and M.P.No.2 of 2015

W.A.No.1472 of 2015:-

- 1.The Secretary to Government
Health and Family Welfare (K1) Department
Fort St.George
Chennai-9
 - 2.The Director of Medical and Rural
Health Services
DMS Complex, 359-361
Anna Salai, Teynampet
Chennai-600 006
- ...Appellants/Respondents

Vs.

Dr.M.R.Enbasekaran ...Respondent/Petitioner

Writ Appeal filed against the order dated 15.03.2013 in W.P.No.12989 of 2011. Writ petition filed u/a 226 of the constitution of India praying for the issuance of the writ of certiorari calling for the records relating to the order of the first respondent in G.O.(D) No.2 Health and Family Welfare (K1) Department, dated 02.01.2008 and review petition order vide G.O. (D) No.1165 Health and Family Welfare (K1) Department dated 30.10.2009 quash the same.

For Appellants: Mrs.Srijayanthi, Spl.Govt.Pleader

For Respondent: Mr.Vijay Narayan, Senior Counsel
for Mr.K.Ramasamy

W.P.No.2890 of 2015:-

Dr.M.R.Enbasekaran ..Petitioner

VS

- 1.The Secretary to Government
Health and Family Welfare (K1)Department
Fort St.George
Chennai-9
 - 2.The Director of Medical and Rural
Health Services
DMS Complex, 359-361
Anna Salai, Teynampet
Chennai-600 006.
 - 3 Dr. S. Fathimuthu Zahara
Hospital Superintendent GHQH Tenkasi
Tirunelveli District.
 - 4 Dr. V. Udhayakumar
Hospital Superintendent Government
Headquarters Hospital Kallakurichi
Villupuram District.
 - 5 Dr. K. Jothi
Chief Civil Surgeon (Common)
Government
Hospital Villupuram District.
 - 6 Dr. P. Banu
Chief Civil Surgeon (Anesthesia)
Government Headquarters Hospital
Kovilpatti Thoothukudi District.
 - 7 Dr. R. Latha
Chief Civil Surgeon (Common) ESI
Dispensary Redhills Chennai.
 - 8 Dr. N. Hemalatha Gandhi
Chief Civil Surgeon (Common)
Government
Hospital Maduranthagam Kancheepuram
District.
 - 9 Dr. Bhiranesh
Chief Civil Surgeon (O&E) Government
Headquarters Hospital Padmanabapuram
Kanniyakumari District.
- ..Respondents

R3 to R9 Impleaded as per Order dated
23/02/2015 of in MP.3/2015 in WP.2890/2015.

Writ Petition filed praying to issue a Writ of Certiorarified Mandamus calling for the records of 1st respondent in G.O.(D).No.1061, Health and Family Welfare (A2) Department dated 17.10.2014 and quash the same in so far as it fails to promote the petitioner to the post of Joint Director of Health Services/Joint Director of Medical and Rural Health Services in Category-21 of Class-I in Branch-I and consequently direct the respondents to promote the petitioner to the post of Joint Director of Health Srvices/Joint Director of Medical and Rural Health Services in Category-21 of Class-1 in Branch-1 (Medical) in the Tamil Nadu Medical Services and place him in S.No.12 of the list of promoted officers vide G.O.(D).No.1061, Health and Family Welfare (A2) Department dated 17.10.2014 and also disburse the petitioner with all the monetary benefits that was denied during the period of punishment vide an impugned G.O.(D). No.2 Health and Family Welfare (K1) Department, dated 02.01.2008.

For Petitioner :- Mr.Vijay Narayan, Senior counsel
for Mr.K.Ramasamy

For respondents :- Mrs.A.Srijayanthi, Spl.Govt.Pleader
for R1 and R2.

COMMON JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH, J.)

Heard Mrs.A.Srijayanthi, the learned Special Government Pleader appearing for the appellants/State and Mr.Vijay Narayan, learned Senior counsel appearing for the respondent/writ petitioner in W.P.2890 of 2015.

2. For the sake of convenience, firstly, we deal with Writ Appeal No.1472 of 2015.

3. The Writ Appeal has been filed as against the order of the learned Single Judge dated 15.03.2012, with a delay of 734 days. While entertaining the said condone delay application in M.P.No.1 of 2015 in WA.SR.31871 of 2015, this court, by order dated 25.08.2015, pointed out that the said Miscellaneous Petition was filed in a casual manner without disclosing the reasons as required under the provisions of law. Further, this court, directed the appellants to pay a sum of Rs.15,000/- to the respondent, as a condition to condone the delay. Accordingly, the State made the payment by way of Demand Draft bearing No.381252, dated 31.08.2015, as stipulated and a receipt dated 31.08.2015, is found place in the record.

4. The respondent herein was appointed as Assistant Surgeon on 10.12.1986 and was promoted as Senior Assistant Surgeon on 10.12.1996 and as Civil Surgeon on 30.09.2002. While so, he was served with a charge memo under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, alleging that he was unauthorisedly absented himself from 01.11.2003. On the charges framed against him, ex-parte enquiry was conducted and he was imposed with a punishment of stoppage of increment for a period of three years with cumulative effect vide G.O.(D).No.2 Health and Family Welfare (K1) Department, dated 02.01.2008. The respondent herein/writ petitioner preferred a review petition before the Secretary to Government, Health and Family Welfare Department(1st appellant herein), who rejected the same by G.O.(D).No.1165, Health and Family Welfare (K1) Department dated 30.10.2009.

5. The Charge Memo issued by the Director of Medical and Rural Health Services read as under:-

"Charge-1:

That Dr.M.R.Enbasekaran, while working as Civil Surgeon, at Government Headquarters Hospital, Namakkal, absented himself unauthorisedly without any information with effect from 01.11.2003 to till date (i.e., 27.04.2004), inspite of specific instructions.

Charge-2:-

That Dr.M.R.Enbasekaran, while functioning in the aforesaid office and period refused to receive the telegram issued by the Joint Director of Health Services, Namakkal, and thus disobeyed the orders of the superiors.

Charge-3:-

That Dr.M.R.Enbasekaran, by his above action, had denied Medical treatment in the particular speciality to the needy poor General Public, who came to Government Headquarters Hospital, Namakkal, for treatment. "

After conducting ex-parte enquiry, the 1st appellant herein by G.O.(D).No.2, dated 2nd January 2008, imposed punishment of stoppage of increment for a period of three years with cumulative effect. The G.O., further noted that, the effect of the punishment on the pension of the delinquent officer has been considered and it will affect his pension. Aggrieved by the said order of punishment, the respondent herein filed Appeal/Review Petition to the 1st appellant herein stating that he had personal problems which made him depressed during the period November 2003 to July 2006; during the said period, his wife left his family and he has to look after his children; after his wife has returned to his family, he joined the service and attending regularly without taking any leave. However, the said appeal was

also rejected, by observing that there is no flaw in the disciplinary proceedings initiated against the delinquent officer and there is no valid points or fresh grounds to reconsider the punishment imposed on him.

6. Aggrieved by those two G.Os., the respondent herein/delinquent officer, has approached this court by way of Writ Petition No.12989 of 2011, seeking to quash the impugned order of punishment passed by the Secretary to Government, Health and Family Welfare (K1) Department, dated 02.01.2008 and the order passed in Review Petition of the respondent/Writ Petitioner, made in G.O.(D).No.1165, Health and Family Welfare (K1) Department dated 30.10.2009.

7. Based on the contentions raised on either side, the learned Single Judge, by order dated 15.03.2013, quashed the impugned G.Os., and allowed the Writ Petition by observing that there is no indication in the impugned order that the 2nd appellant herein/The Director of Medical and Rural Health Services, was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice, following the judgment of this Court in Arokiadoss Vs. Deputy Commissioner of Police, Law and Order (South), Madras-8 and Another reported in 1989 WLA 274. The learned Single Judge further pointed out that the Appellate Authority's order is in violation of the rules relating to disposal of appeals.

8. After hearing the arguments advanced by the learned counsel appearing on both sides and on a perusal of the materials placed on record, we do not find any fault in the observation made by the learned Single Judge. Insofar as punishment imposed on the respondent/delinquent officer viz., stoppage of increment for three years with cumulative effect, is concerned, it appears that the same affects both the promotion and the pension of the respondent. As pointed out by the learned Single Judge as well as learned Senior counsel appearing for the respondent herein, the enquiry officer committed blunder in non consideration of the documents furnished by the respondent particularly, the reason specified in the Review/Appeal petition, for the unauthorised absence. As rightly contended by the learned Senior counsel appearing for the respondent, without assigning any reason on aspects regarding as to whether the delinquent officer has been examined and given opportunity of cross examination or whether the charges are proved after thorough enquiry, the punishment was imposed by the appellants.

9. Even though the charges framed against the respondent are true and he remained absent unauthorisedly, it has been admitted by the respondent by stating that due to personal reasons, the said delinquency occurred. Hence, the said reason would have been considered by the authorities concerned in a lenient manner and an opportunity of hearing would have been given to the respondent before imposing such a major punishment. Hence, we are of the considered view that the punishment imposed on the respondent based on the ex-parte enquiry is not at all appropriate and not sustainable in the eye of law.

10. Now, it is submitted by the learned Senior counsel appearing for the respondent that the petitioner is due for further promotion for the post of Joint Director of Medical Services. Hence, we are of the considered view that at this stage and length of time, any direction to the appellants herein to conduct de novo enquiry will not be apropos, particularly, when the period of unauthorised absence from duty was from 01.11.2003 to 03.06.2006. Further, we are of the view that it would create nothing but hardship in the minds of both the appellants and respondent.

11. It is pertinent to note that the State preferred the Writ Appeal with a delay of 734 days without assigning any reasons and hence, we are of the view that after such a long delay, the State has taken the matter seriously to contest it. In any event, the respondent, being a Doctor, his service is essential for the society and in such circumstances, the learned Single Judge, after examining the issues raised before him, has passed a detailed order setting aside the impugned G.Os.

12. In view of the foregoing reasons, we do not find any scope for interference in the reasoned order passed by the learned Single Judge and the Writ Appeal sans merit. Accordingly, the Writ Appeal is dismissed. The order of the learned Single Judge is confirmed. On the other hand, we deem it fit to direct the respondent herein to return the sum of Rs.15,000/- to the State/appellants, which was made by the State on 31.08.2015. No costs. Consequently, connected MPs are closed.

13. As far as W.P.No.2890 of 2015 is concerned, the same was filed by the Writ Petitioner/Dr.M.R.Enbasekaran, seeking to quash G.O.(D).No.1061, Health and Family Welfare (A2) Department dated 17.10.2014 and to direct the respondents to promote the petitioner to the post of Joint Director of Health Services/Joint Director of Medical and Rural Health Services. The contention raised in the said Writ Petition is that since he

succeeded in W.P.No.12989 of 2011 and no appeal was filed by the State challenging the said order, as on the date of passing of G.O.Ms.No.1061 dated 17.10.2014 drawing the panel for appointment to the post of Joint Director, he is eligible to be considered for the said post and his name has to be included.

14. In the course of arguments, the learned Senior counsel appearing for the Writ Petitioner submits that he is not pressing the said prayer and seeks permission to withdraw the same with liberty to raise the said issue at the administrative level.

15. Recording the endorsement made by the learned counsel for petitioner, W.P.No.2890 of 2015 is dismissed as withdrawn. No costs. Consequently, connected MP.No.2 of 2015 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri
To

1.The Secretary to Government
Health and Family Welfare (K1)Department
Fort St.George
Chennai-9

2.The Director of Medical and Rural
Health Services
DMS Complex, 359-361
Anna Salai, Teynampet
Chennai-600 006.

+2ccs to Mr.K. Ramasamy, Advocate, S.R.No.39478, 39479
+1cc to the Government Pleader, S.R.No.39952, 39956

PUR(CO)
EU(27/07/2016)

Writ Appeal No.1472 of 2015
and
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