

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:11.03.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.272 of 2016
and
C.M.P.No.4454 of 2016

- 1.The State of Tamil Nadu
Represented by Secretary to Government
Health and Family Welfare Department,
Fort St. George, Chennai - 9.
- 2.The Director,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
- 3.The Dean,
Coimbatore Medical College,
Coimbatore.Appellants/Respondents

V.

Dr.N.SekarRespondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order of this Court dated 23.04.2013 in W.P.No.21324 of 2012. Writ petition filed under Article 226 of the constitution of India to issue a writ of certiorari to call for the records on the file of the 1st respondent in proceedings GO (D) 664 dated 19.7.2012 and quash the same as illegal, incompetent, without judicial and inequitable.

For Appellants : Mr.K.Karthikeyan

Government Advocate

For Respondent : Mr.V.Lakshmi Narayanan

For M/s.V.Raghavachari

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellants have preferred the present intra-Court Writ Appeal as against the order dated 23.04.2013 in W.P.No.21324 of 2012 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the order, on 23.04.2013 in W.P.No.21324 of 2012 [filed by the Respondent/Petitioner], at paragraphs 4 to 6, had observed the following:

"4.But it appears from the records that no notice was issued before the impugned order was passed, cancelling the promotion granted, four years before the date of the impugned order.

5.Additionally, the petitioner has filed a form filled up by him at the time of counselling, clearly indicating the pendency of disciplinary proceedings in columns 9 and 10. Against column 9, the petitioner has stated 'yes' and against column 10, the petitioner has also given the reference number of the charge memo dated 19.2.1993.

6.I do not know due to whose fault the same was not noted. But the fact remains that any order granting promotion to a person cannot be cancelled, after four years without any notice. If a notice had been issued to the petitioner, the petitioner would have pointed out that there was no suppression on his part. If there had been no suppression and if the appointing authority, at the relevant date, has taken a concrete decision to promote the petitioner, the withdrawal of such promotion would tantamount to review of the decision taken by the person, who held office of the competent authority at that time. Therefore, the impugned order deserves to be set aside and is accordingly set aside."

and consequently, allowed the Writ Petition without costs.

3.Challenging the order dated 23.04.2013 in W.P.No.21324 of 2012, the Appellants/Respondents have preferred the instant Writ Appeal primarily contending that in G.O.(D)No.664, Health and Family Welfare (A1) Department, dated 19.07.2012, orders were issued demoting the Respondent/Writ Petitioner from the post of

Associate Professor to Assistant Professor since it is brought to the notice of the 1st Appellant/1st Respondent that a disciplinary proceedings were pending against him, but the same was not appreciated by the Learned Single Judge while allowing the Writ Petition.

4.The Learned Government Advocate for the Appellants submits that if disciplinary proceedings were pending against a particular Government Employee [initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955], then, promoting such a person will create a wrong precedent enabling the other Government Employees to approach this Court seeking necessary relief thereto.

5.It is represented on behalf of the Appellants that the Respondent/Petitioner had misrepresented during the counselling held on 05.03.2008 that he was acquitted in criminal case and failed to inform the fact in regard to the pendency of disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

6.The Learned Government Advocate for the Appellants projects an argument that the orders issued in G.O.(D).No.688, Health and Family Welfare Department, dated 06.06.2008 is well within the norms in force.

7.Finally, the Learned Government Advocate for the Appellants contends that after finalising the disciplinary proceedings, final orders were issued imposing a punishment of stoppage of increment for a period of three months without cumulative effect as per G.O.(D)No.113, Health and Family Welfare Department, dated 05.02.2013 and this vital aspect was not taken into account by the Learned Single Judge at the time of passing the orders in the Writ Petition.

8.Per contra, it is the submission of the Learned Counsel for the Respondent that the Appellants ought not to have demoted the Respondent/Petitioner without conducting an enquiry against him in accordance with law, since at the time of impugned Government Order, he was working as an Associate Professor for more than four years.

9.Proceeding further, it is the stand of the Learned Counsel for the Respondent that in Column 10 of the form filled up by the Respondent/Petitioner [at the time of counselling], he had specifically mentioned about the charges levelled against him in the Memo dated 19.02.1993 and as such, it is wrong to contend that he had not disclosed to the authorities concerned about the fact of pending disciplinary proceedings against him.

10.At this stage, this Court pertinently points out that in

the impugned G.O.(D)No.664, Health and Family Welfare (A1) Department (passed by the Principal Secretary to Government), dated 19.07.2012, in paragraph 4 and 5, it is observed as follows:

"4.The Government have examined the case carefully and independently. As a Government servant, the Medical Officer should disclose the pendency of disciplinary action initiated against him by Director of Medical and Rural Health Services, when he attended the promotion counseling conducted by Director of Medical Education but he has failed to do so. Hence, the Government have decided to demote Dr.N.Sekar, Associate Professor of Plastic Surgery, Government Coimbatore Medical College, Coimbatore as Assistant Professor. Accordingly, the Government do and hereby direct that Dr.N.Sekar, Associate Professor of Plastic Surgery, Government Coimbatore Medical College be demoted as Assistant Professor of Plastic Surgery.

5.The Government also direct the Director of Medical Education to give necessary posting to the above Medical Officer as Assistant Professor of Plastic Surgery, immediately at her level. Further, the Director of Medical Education is directed to fix the pay of Dr.N.Sekar in the post of Assistant Professor

and is informed that the service rendered by the Medical Officer in the post of Associate Professor to which he was wrongly promoted/appointed in an officiating capacity as a result of the error should not be reckoned for the purpose of increment or for any other purpose in that post of Associate Professor to which he would not normally be entitled but for the erroneous promotion."

11.In this connection, this Court significantly points out that the Principles of Natural Justice are recognised as being a part of the guarantee enshrined under Article 14 of the Constitution of India. Further, where the proposed action is based on certain materials, then, it must be disclosed to a deviant/delinquent. That apart, an order which affects a Government/Civil servant in respect of his promotion or financial matter in issue should be passed after objective consideration and assessment of all relevant attendant facts by

providing him full opportunity to make out his case. If the Principles of Natural Justice are not followed, then, the defect goes to the root of the matter and certainly it would cause an undue hardship and prejudice to the concerned employee, as opined by this Court.

12. Furthermore, it cannot be forgotten that the Principles of Natural Justice are not 'embodied' rules, as per observation of LORD BRIDGE of HARWICH in *Lloyds & others v. McMahon* reported in (1987) 1 All ER 1118. Of course, the purported rules of Natural Justice are not engraved on 'Tables of Stone'. After all, the aim of the Natural Justice rules is to prevent miscarriage of Justice.

13. At this juncture, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in *State of Orissa V. Dr. (Miss) Binapani Dei*, reported in AIR 1967 SC 1269, wherein it is observed that 'the aim of the rules of natural justice is to secure justice'.

14. It is to be noted that in view of the fact that the Respondent/ Petitioner had disclosed in the form at Column 10 about the pendency of disciplinary proceedings against him based on Memo dated 19.02.1993, this Court is of the considered opinion that no fault can be attributed on the part of the Respondent/Petitioner that he had suppressed the factum of pending disciplinary proceedings.

15. Be that as it may, as far as the present case is concerned, admittedly no notice was issued to the Respondent/Petitioner before passing the impugned order in G.O. (D)No.664, Health and Family Welfare (A1) Department, dated 19.07.2012 and in short, the order of demotion was passed in negation to the Principles of Natural Justice. On this score alone, this Court upholds the order of the Learned Single Judge in setting aside the impugned order in G.O.(D)No.664, Health and Family Welfare (A1) Department, dated 19.07.2012. Suffice it for this Court to point out that the order dated 23.04.2013 in W.P.No.21324 of 2012 passed by the Learned Single Judge is flawless. Consequently, the Writ Appeal is devoid of merits.

16. In fine, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The State of Tamil Nadu
Represented by Secretary to Government
Health and Family Welfare Department,
Fort St. George, Chennai - 9.

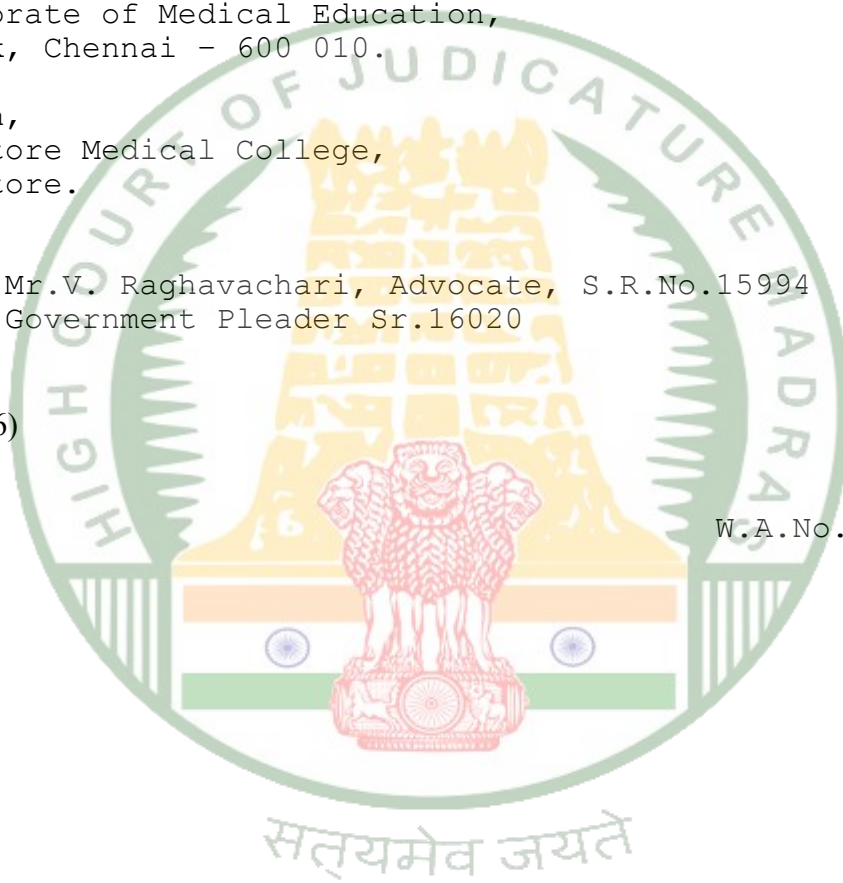
2.The Director,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Dean,
Coimbatore Medical College,
Coimbatore.

+ 1 cc to Mr.V. Raghavachari, Advocate, S.R.No.15994
+ 1 cc to Government Pleader Sr.16020

KGK (CO)
EU (24/03/16)

W.A.No.272 of 2016



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