

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18452 of 2016 &
WMP.No.16160 of 2016

Dr.K.R.Brindha

... Petitioner

Vs.

1.The Director of Public Health and
Preventive Medicine,
Chennai -6.

2.Deputy Director of Health Services,
Namakkal,
Namakkal District.

3.The Block Medical Officer,
Government Primary Health Centre,
Puthanatham,
Trichy District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned charge memorandum issued by the 2nd respondent in his proceedings R.No.2846/A1/2014 dated 11.2.2016 served upon the petitioner on 21.4.2016 and quash the same as illegal.

For Petitioner : Mr.B.Saravanan
For Respondents : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

The charge memo issued by the second respondent in proceeding dated 11.2.2016 is under challenge in this writ petition.

2. On perusal of the charge memo, it is seen that the writ petitioner, while working as a Senior Assistant Surgeon in Government Primary Health Centre, Kokkarayanpet, Namakkal District, committed misconduct of unauthorised absence. In this

regard, a charge memo was issued by the second respondent in proceeding dated 11.2.2016. However, the writ petitioner even before submitting her explanation/objections on the charge memorandum, has filed the writ petition under Article 226 of Constitution of India.

3. The writ petitioner being a Senior Assistant Surgeon, is bound to attend her duties promptly. The medical facilities are to be provided by the State is a constitutional mandate and every State shall provide adequate medical facilities to the citizens of this great nation. A decent medical facility is a requirement and the medical treatment is now a part of the fundamental rights enshrined under Article 21 of the Constitution of India. The doctors working in Primary Health Centres are duty bound to serve the people of that local area and the Primary Health Centres are situated in remote areas and the people living in rural areas ought to be attended promptly and all required medical treatments are to be provided. In recent days, there are general complaints arising from and out of the people residing in rural areas that the doctors and staff from the medical department are not properly attending to their duties in Primary Health Centres. In this regard, it is the duty of the Director of Public Health and Preventive Medicine to see that the doctors posted in Primary Health Centres and other rural areas are attending to the duties promptly and providing adequate medical treatment to the residents of the villages and other remote areas. The allegation against the writ petitioner in this case is for unauthorised absence and the writ petitioner, instead of submitting her explanation/objections moved this writ petition challenging the very charge memo.

4. Initiation of disciplinary proceedings by the disciplinary authorities in accordance with the Tamil Nadu Civil Services (Discipline and Appeal) Rules, cannot be challenged at this stage of charge memo and this Court can entertain the writ petition, challenging the charge memo only on exceptional circumstances. The charge memo can be challenged only if the same is issued by an incompetent authority, having no jurisdiction or allegation of malafides are raised or if the charge memo is in violation of the statutory rules. Even in case of raising allegation of malafides the authority against whom such an allegation is raised has to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of these grounds, no Writ can be issued against the charge memo. Further, the disciplinary proceeding initiated against the public servants is to be allowed to continue to reach its logical conclusion. Intermittent intervention in disciplinary proceedings is certainly not preferable. Thus, this Court is of the firm view that at the stage of charge memo, the

High Court cannot go into the merits and demerits of the matter and adjudicate the same in the writ petition filed under Article 226 of the Constitution of India. It is for the competent authority concerned to consider the merits and demerits of the allegation and take a final decision on the disciplinary proceedings.

5. In this view of the matter, no further adjudication is required in this writ petition on merits and it is left open to the writ petitioner to submit her explanation/objections and prove her innocence before the enquiry proceedings and the merits regarding the allegations set out in the charge memo cannot be adjudicated in the writ petition.

6. Accordingly, the writ petition stands dismissed. Consequently connected miscellaneous petition is closed. However, no order as to costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Director of Public Health and Preventive Medicine,
Chennai -6.
2. Deputy Director of Health Services,
Namakkal,
Namakkal District.
3. The Block Medical Officer,
Government Primary Health Centre,
Puthanatham,
Trichy District.

+1cc to the Government Pleader Sr. 67736
+1cc to Mr.B.Saravanan, Advocate Sr. 67435
+1cc to Mr.T.Sundaravadanam, Advocate Sr. 67325

W.P.No.18452 of 2016

KJI (CO)
VR(10/10/2017)