

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.25210 of 2015
and
MP.No.1 of 2015
and
W.M.P.No.32540 of 2016

Dr.C.Mushtaq Ahamed ... Petitioner

vs.

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Chennai - 9.
 2. The Principal Secretary and
Commissioner of Indian Medicine and Homoeopathy
Arumbakkam,
Chennai - 106.
 3. The Principal,
The Government Unani Medical College,
Chennai - 106.
- Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records pertaining to the charge memo issued by the second respondent in Ref.No.7394/E2/1/2014 dated 13.07.2015 and quash the same.

For Petitioner :Mr.S.Kamadevan
For Respondents :Mr.K.Dhanajeyan
Special Government Pleader

ORDER

The memorandum of charge issued to the writ petitioner by the second in Ref. No.7394/E2/1/14 dated 13th July, 2015 is challenged in this writ petition.

2. The charge against the writ petitioner is as follows:

"Charge No.1

You (Prof.DR.C.MUSHTAQ AHAMED), while working as,

Govt. Unani Medical College, Chennai, has left the country from 17.10.2012 to 25.11.2012 without getting proper permission and without sanction of leave from the government.

Charge No.2

You (Prof.DR.C.MUSHTAQ AHAMED) by the virtue of your above said lapses, were not sincere and devoted to your duties. You have miserably failed to discharge your assigned duties sincerely and earnestly. Thus, you have violated the rule 24A of the Tamil Nadu Government Servants' Conduct Rules, 1973."

3. The learned counsel appearing for the writ petitioner contended that the charge itself is vitiated on the ground that no 'No objection Certificate' (NOC) is needed to proceed for Hajj Pilgrimage. Further, it is contended that the writ petitioner has submitted proper application before the Competent Authority and the same was forwarded to the Government for according sanction and for granting 'No objection Certificate' (NOC). However, the necessary 'No objection Certificate' (NOC) as well as the leave sanctioning order was not issued in time and therefore the writ petitioner proceeded with the Pilgrimage and returned back and rejoined in duty.

4. The learned counsel submitted G.O.(Ms).No.132, Backward Classes, Most Backward Classes & Minorities Welfare(S1) Department, dated 20th November 2012, wherein it has been stated as follows:

"4. The Government have carefully examined the proposal of the Member-Executive Officer, Tamil Nadu State Hajj Committee and in partial modification of the Government Order 2nd read above, Government direct that the Government servants proceeding on Hajj Pilgrimage to Saudi Arabia either through Tamil Nadu State Hajj Committee or through Private Tour Operators on temporary Hajj passports with a validity of not exceeding twelve months (for Saudi Arabia) are exempted from obtaining "Identity Certificate" for grant for passport. The Government servants who proceed for Umrah/Hajj Pilgrimage to Saudi Arabia either through Tamil Nadu State Hajj Committee/Private Tour Operators shall also be exempted from obtaining "No Objection Certificate"

5. However, the said order was issued on 20th November, 2012 and the writ petitioner proceeded to Hajj pilgrimage on 17th October, 2012 and therefore, on the date of undertaking, the Hajj Pilgrimage, the Government Order (G.O) was not in force and the Government Order (G.O) seems to have been issued retrospectively and this Court is of the view that as on 17th October, 2012, the permission from the Government was the

rule prevailing. Further, in respect of sanctioning of leave, the learned counsel submitted that the petitioner made necessary applications and the same was forwarded, but, the rule requires sanctioning of leave, which was not given at the time of undertaking the Hajj Pilgrimage. However, these factors are relating to the merits of the case and this Court, at this stage, is not in a position to appreciate the merits and the demerits of the case, in view of the fact that the very charge memo is under challenge.

6. This Court is of the view that writ against a charge memo shall be entertained only on limited grounds and on exceptional circumstances. A charge memo is capable of being quashed on the limited grounds of jurisdiction, incompetency and on mala fides. Even in case of alleging mala fides, the authority against whom such an allegation is raised, has to be impleaded as a party in his personal capacity in writ proceedings.

7. In the absence of any such grounds, no writ will lie against the charge memo. All disciplinary proceedings initiated under the provisions of the Discipline and Appeal Rules have to be proceeded with and a logical conclusion has to be arrived by conducting enquiry. No public servant should be allowed to escape from the clutches of disciplinary proceedings. If any misconduct is alleged against such an employee, it is for the employee to defend his case and prove his innocence before the Enquiry Officer/Tribunal.

8. Such being the legal dictum, the writ petition filed against the charge memo need not be entertained on the facts and circumstances of the case on hand. Accordingly, no further consideration is required in this writ petition. The writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

svn/kak

To

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Chennai - 9.

2. The Principal Secretary and
Commissioner of Indian Medicine and Homoeopathy
Arumbakkam,
Chennai - 106.

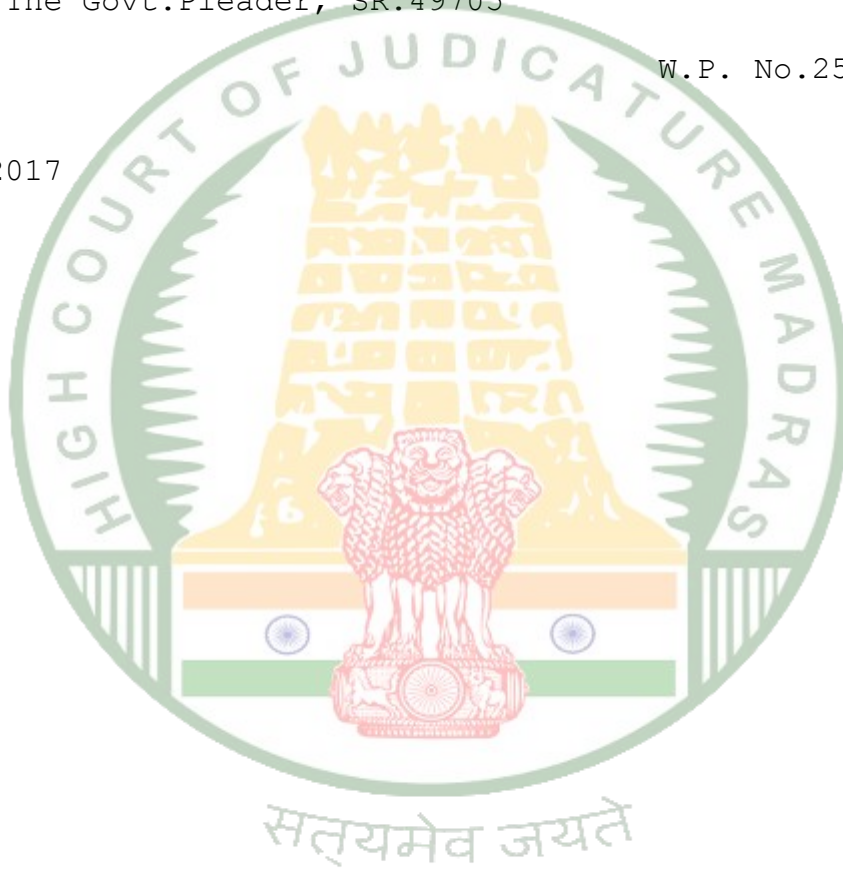
3. The Principal,
The Government Unani Medical College,
Chennai - 106.

+ 1 cc to Mr.S.Kamadevan, Advocate, SR.49226

+ 1 cc to The Govt.Pleader, SR.49705

W.P. No.25210 of 2015

RJ(CO)
NR 28/08/2017



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