

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2017

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.27906 of 2017 and
WMP.Nos.29932 and 29933 of 2017

Dr.B.Venkatesan

...Petitioner

Versus

1. The Government of Tamil Nadu
rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Fort St. George,
Madras-9.

2. The Director of Medical Education,
Chennai-10.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to Ref. No.32489/SC1/2/2008 dated 22.6.2017 and G.O. (D) 764, Health and Family Welfare (1-2) Department dated 27.6.2008 and G.O. (D) 740, Health and Family Welfare (1-2) Department, dated 31.07.2012 of the 1st respondent, to quash the same and to issue consequential directions to the respondents to permit the petitioner to retire from service on 31.07.2012 without any condition and with entitlement of retiral and pensionary benefits and also to regularise the period of suspension from 27.06.2008 till 31.07.2012 as 'duty' for all purposes and to disburse the duty pay and allowances for the said period and disburse

the arrears with interest after deducting subsistence allowance paid and to grant all consequential retirement and pensionary benefits with interest on the delayed payment.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.R.A.S.Sentilvel,

Additional Government Pleader

ORDER

This Writ Petition is directed against the charge memo dated 22.06.2017 issued by the 2nd respondent herein, namely, the Director of Medical Education, Chennai.

2. Though various grounds have been raised in the affidavit filed in support of the Writ Petition, the learned Counsel appearing for the petitioner submitted that by order dated G.O. (D) 740, Health and Family Welfare (1-2) Department, dated 31.07.2012, the petitioner was not permitted to retire from service on attaining the age of superannuation on 31.07.2012, but, retained him in service until final orders are passed by the competent authority on a Criminal case is pending against him before the Chief Judicial Magistrate, Dharmapuri in S.C.No.6/2009. The learned Counsel for the petitioner further submitted that now the criminal case was concluded by acquitting the petitioner by judgment dated 06.5.2016. Now the grievance of the petitioner is that after passing of the acquittal order, the 2nd

respondent cannot issue the charge memo dated 22.06.2017. The reason is that the petitioner had already reached the age of superannuation on 31.07.2012 A.N. and he was only retained till the conclusion of the criminal proceedings.

3. This Contention of the learned Counsel for the petitioner is wrong. The reason is that even the G.O.(D) 740, Health and Family Welfare (1-2) Department dated 31.07.2012 of the 1st respondent clearly says that the petitioner was not permitted to retire from service on his reaching the age of superannuation on the afternoon of 31.07.2012, but retained in service until final orders are passed by the competent authority. This has been done by exercising power given under Rule 56(1)(c) of the Fundamental Rules.

4. In addition to the above, the learned Counsel for the petitioner also relied on a decision of the Hon'ble Supreme Court in **Union of India and Others vs. Naman Singh Shekhawat reported in (2008) 4 SCC** in which it is held that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal court. Further, it has been made clear that the same would not mean that a proceeding would be initiated only because it is lawful to do so and it must be reasonable and fair.

5. In the case on hand, the petitioner was trapped and

arrested by the Investigating Authority on 23.04.2008 on the allegation of demand and acceptance of bribe of Rs.350/- as illegal gratification from one Muniappan, for which he faced the criminal trial in S.C.No.6/2009 on the file of the learned Chief Judicial Magistrate, Dharmapuri. As a matter of fact, the department has not prosecuted the petitioner departmentally, during the pendency of the criminal case, may be for the reason that the petitioner would be taking a defence that he would be unnecessarily compelled to disclose his defence before the Enquiry Officer. Now, after the conclusion of the criminal case, the impugned charge memo dated 22.06.2017 has been issued. Under such circumstances, I do not find any justification to interfere with the domestic enquiry because even now, he has been retained in service as per the G.O. (D) 740, Health and Family Welfare (1-2) Department, dated 31.07.2012.

6. At this stage, the learned Counsel for the petitioner submitted that when in the criminal case, the Special Officer/Chief Judicial Magistrate, Dharmapuri, has given valid reasons for acquitting the petitioner, on the ground that only a sum of Rs.50/- was recovered from the petitioner herein, which is the prescribed fee for issuance of Medical Certificate and further, when the de facto complainant who had in his initial complaint stated that the petitioner demanded and accepted bribe of Rs.350/- for issuance of a Medical Certificate, ultimately, turned hostile during the trial, no purpose would be served

by initiating departmental action against the petitioner. Though this argument seems to be very attractive, in my considered view, this has to be decided only in the departmental proceedings.

7. In the result, the Writ Petition fails and the same is accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

01.11.2017

Index:Yes/No
Internet:Yes/No
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To

1. The Secretary,
Government of Tamil Nadu,
Higher Education Department,
Secretariat, Fort St. George,
Madras-9.
2. The Commissioner,
Directorate of Technical Education,
Madras-25.

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T.RAJA, J.
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