

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.21174/2012

K.Indrasekaran

..

Petitioner

Vs.

1.The Principal Secretary to Government
Government of Tamil Nadu
Health & Family Welfare Department
Fort St George, Chennai 600 009.

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

3.The Dean
Rajiv Gandhi Government General
Hospital, Chennai 600003.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for a writ of certiorarified mandamus calling for the entire records ending with the order in G.O.[D] No.399 dated 14.05.2012 passed by the 1st respondent confirming the order dated 05.01.2009 passed by the 3rd respondent which was confirmed in appeal by order dated 14.09.2011 by the 2nd respondent and quash the same and direct the respondents to reduce the punishment imposed on the petitioner from that of removal from service to that of termination of service of compulsory retirement as on 05.01.1999 and consequently pay the petitioner all retirement benefits including gratuity and pension due to him.

For Petitioner : Mr.S.D.S.Philip
For RR 1 to 3 : Mr.K.Dhananjayan, Spl.GP

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner, challenging the impugned order dated 14.05.2012 passed by the 1st respondent in removing him from service, came forward to file this writ petition.

3 The facts leading to the filing of this writ petition, briefly narrated, are as follows:-

[a] The petitioner was selected and temporarily appointed as Pharmacist vide proceedings dated 12.01.1971 and was transferred to various places and he was promoted as Lab Supervisor and was posted in Cardio-Thoracic Department, Rajiv Gandhi Government General Hospital on 08.05.1986. It is the claim of the petitioner that he had put in 23 years of hard, sincere and blemishless service to the satisfaction of the superior officers.

[b] The petitioner would further aver that he was suffering due to severe domestic problems, especially, in the light of the fact that his wife became mentally ill during the year 1994 and as such, he was the only person to take care of her and also his two children. The mental illness and sufferings forced the petitioner to apply for Extraordinary Leave on Loss of Pay from 01.04.1994 and in this regard, he submitted several leave applications to the 3rd respondent for sanction of Earned Leave and subsequently, he joined duty on 01.19.1997 as Lab Supervisor, Blood Bank, at Government General Hospital, Chennai. The petitioner, in order to take care of his wife and two children, submitted two letters dated 10.10.1997 and 10.11.1997 respectively, praying for voluntary retirement and without considering the same, the 3rd respondent has initiated disciplinary proceedings vide Charge Memo dated 28.07.1997, for which, the petitioner has submitted his written statement of defence.

[c] The petitioner would further aver that to give proper medical treatment to his wife, he was often going to New Delhi and as such, he was not in a position to participate in the disciplinary proceedings. However, to his shock and surprise, he was issued with a communication dated 29.08.2008, informing him that he has been removed from service with effect from 05.01.1999. The petitioner was not furnished with the order of removal and Enquiry Report and therefore, filed WP.No.1197/2008, challenging the said order of removal and the said writ petition was dismissed, by directing the respondents to furnish copies of the order of removal and the said writ petition and other documents relating to the disciplinary proceedings.

[d] The petitioner, after receipt of the said documents, filed yet another writ petition in WP.No.8857/2009,

challenging the order of removal and however, it was dismissed as withdrawn on 10.02.2011 and liberty was granted to the petitioner to file a Statutory Appeal before the 2nd respondent and accordingly, the petitioner filed an appeal dated 09.03.2011 before the 2nd respondent. However, the 2nd respondent vide order dated 14.09.2011 has dismissed the said appeal and challenging the legality of the same, he has filed a revision before the 1st respondent and it was also dismissed on 14.05.2012 and aggrieved by the said dismissal of the revision, the petitioner is before this Court by way of filing the present writ petition.

4 Mr.S.D.S.Philip, learned counsel appearing for the petitioner has invited the attention of this Court to the materials and would submit that the petitioner, on account of the mental illness suffered by his wife and in order to maintain his two children and also to provide better medical treatment to her, was often going to New Delhi and that was the sole reason for his absence and in any event, the Disciplinary Authority and the Revisional Authority ought to have sympathetically taken into consideration of the said fact and in stead of imposing major penalty of removal from service, ought to have imposed some other minor penalty. It is the further submission of the learned counsel appearing for the petitioner that admittedly the petitioner submitted two representations dated 10.10.1997 and 10.11.1997 respectively praying for Voluntary retirement from service and without considering the same, the order of removal came to be passed and despite the said order being not stigmatic, the terminal benefits are yet to be settled and therefore, prays for appropriate orders.

5 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader has drawn the attention of the Counter Affidavit filed on behalf of the respondents and would submit that admittedly, the petitioner was unauthorisedly absent from 01.04.1994 to 09.11.1997 and though the Disciplinary Authority was entitled to imposed the punishment of dismissal from service, taking into consideration the family circumstances and past record of service, has passed the order of removal from service, which was confirmed in the appeal as well as in the revision, this Court, under normal circumstances, may not interfere with the order of punishment, in the exercise of its jurisdiction under Article 226 of the Constitution of India. Insofar the submission made by the learned counsel for the petitioner as to the non-acceptance of his request for voluntary retirement, it is the submission of the learned Special Government Pleader that as per FR 56[3][c], the application for voluntary retirement should be submitted well in three months advance and during the notice period, he should not be on Earned Leave and on due date of voluntary retirement, he should be on duty and admittedly, the petitioner did not fulfill any of the said conditions and as such, his request for voluntary

retirement, has not been considered. Lastly, it is submitted by the learned Special Government Pleader that in the facts and circumstances the order of removal from service is a fit and proper punishment and accordingly, it was imposed and prays for dismissal of this writ petition.

6 This Court paid its best attention to the rival submissions and also perused the materials placed before it.

7 It is not in serious dispute that the petitioner was absent from duty between 01.04.1994 and 09.11.1997 and the explanation offered by him is that his wife was suffering due to mental illness and apart from taking care of his wife, he has to look after his two children also and that, to provide better medical treatment to her, he was often going to New Delhi which resulted in his absence. The petitioner was issued with a charge memo, for which, he has also submitted his representation and thereafter, he did not participate in the disciplinary proceedings and the Disciplinary Authority, after observing due formalities, has imposed the punishment of removal from service. The petitioner's appeal before the Appellate Authority has also ended in dismissal and so also, the revision before the 1st respondent / Revisional Authority. It is a well settled position of law, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, normally will not interfere with the punishment, unless the findings recorded by the Disciplinary Authority are perverse or based upon 'no evidence'. But, in the considered opinion of the Court, the Disciplinary Authority and the Revisional Authority, had taken into consideration, all the material aspects and rightly reached the conclusion that the order of removal from service is a fit and proper punishment to be imposed on the petitioner.

8 It is also pertinent to point out at this juncture that under Rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules, the competent authority can impose major punishments, viz., compulsory retirement, removal from service, dismissal from service and as per explanation No.3, removal of a person from civil service of the State Government, shall not disqualify for future employment ; but dismissal of a person from service of the State Government, shall ordinarily disqualify from future employment.

9 The petitioner, while employed as Lab Assistant in Rajiv Gandhi Government General Hospital, at Chennai, absented himself unauthorisedly between 01.04.1994 and 09.11.1997 and though it was opened to him to participate in the disciplinary proceedings, he did not do so. The Disciplinary Authority has taken into consideration the period of service rendered by him and his track record, had chose to impose the punishment of removal from service.

10 In the absence of perversity attached to the findings rendered by the Disciplinary Authority as confirmed by the Appellate as well as the Revisional Authorities, this Court cannot interfere with the same and therefore, it is of the considered view that the order of removal from service passed against the petitioner is a fit and proper punishment. It is the submission of the learned counsel for the petitioner, that he was paid with a sum of Rs.40,643/- being the General Provident Fund amount and his terminal benefits have not been settled at all.

11 As already pointed out, as per explanation No.3 to Rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules, removal of a person from civil services of the State Government, shall not disqualify him from future employment..... and therefore, it cannot be termed as stigmatic and as such, the petitioner is entitled to the terminal and other benefits, if he is otherwise eligible.

12 In the result, the writ petition is dismissed confirming the order of the 1st respondent dated 14.05.2012 made in G.O [D] No.399, Health and Family Welfare [I-1] Department. No costs.

13 Since this Court has already held that the order of removal from service passed against the petitioner, is not stigmatic one, the respondents are directed to confer the retiral/terminal and other benefits due and payable to the petitioner if the claim is otherwise in order and pass appropriate orders within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary to Government
Government of Tamil Nadu
Health & Family Welfare Department
Fort St George, Chennai 600 009.

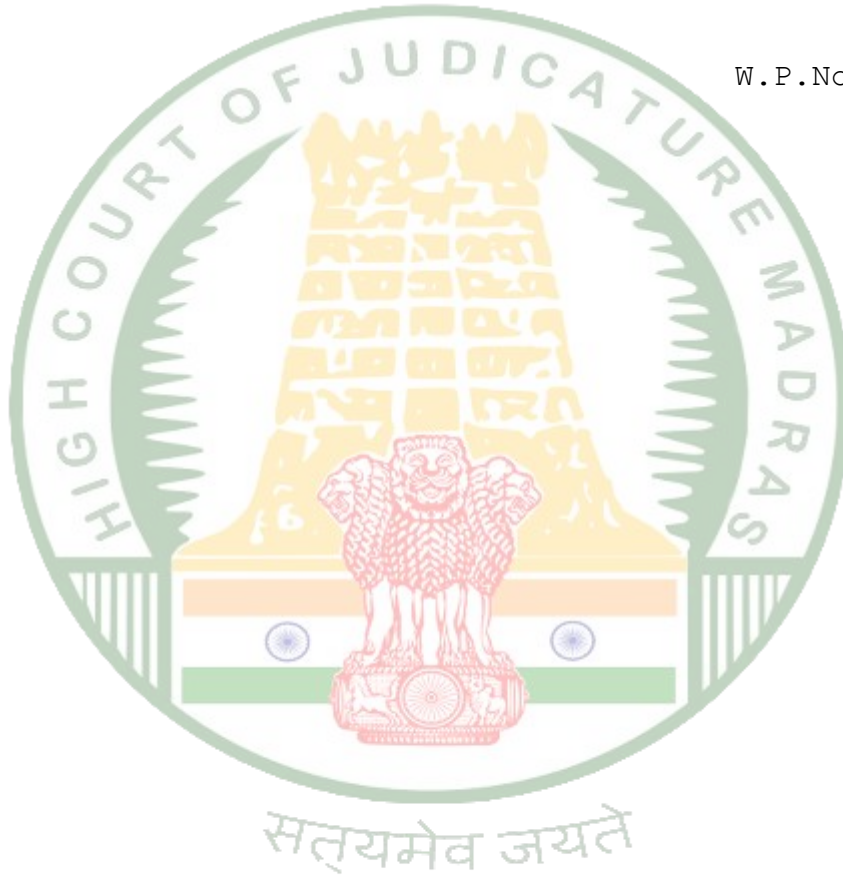
2. The Director of Medical Education,
Kilpauk, Chennai 600 010.

3. The Dean
Rajiv Gandhi Government General
Hospital, Chennai 600003.

+1 CC to Mr.S.D.S.Philip, Advocate sr 21178

W.P.No.21174/2012

KGK(CO)
sp/20/4



WEB COPY