

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2017

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P. No.8812 of 2004

A.Jothibai
Assistant Professor,
Department of Bio Chemistry,
Mahatma Gandhi Dental
College and Hospital,
Pondicherry. ... Petitioner

Vs.

Principal-cum-Disciplinary Authority,
Mahatma Gandhi Dental College and
Hospital,
Pondicherry-605 006. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified mandamus to call for the records relating to the order bearing reference No.I-67/MGDCH/Estt.A1/2000-2001 dated 27.9.2003 on the file of the respondent and quash the same and consequently direct the respondent and to permit the petitioner to resume the petitioner's duties.

For Petitioner : No appearance
For Respondents: No appearance

ORDER

When the writ petition was filed way back on 30.03.2004, the writ petitioner was working as an Assistant Professor in Mahatma Gandhi Dental College and Hospital, Pondicherry (hereinafter referred to as the 'said institution'). Principal-cum-Disciplinary authority of the said institution is the sole respondent in this writ petition.

2 An order dated 27.09.2003 bearing reference No.I-67/MGDCH/Estt./A1/2000-2001 passed by the respondent, placing the writ petitioner under suspension on the ground that a case against her in respect of a criminal offence is under trial, has been called in question in this writ petition. Therefore, this order of the respondent shall hereinafter be referred to as the 'impugned order'.

3 Before I proceed further with the writ petition, it is to be recorded that this writ petition was earlier listed before me on 12.7.2017 and my proceedings read as follows :

"When the matter was called, there was no representation for both sides in the first call. The matter was passed over and called again before lunch / before rising. Again there was no representation for both sides in the 2nd call also. Post for dismissal whenever the matter is listed in due course."

4 The above proceedings speak for itself.

5 Notwithstanding the above said proceedings / order, the matter was not listed under the caption 'for dismissal' today. However, when the matter was called, there was no representation for both sides today also. The case was passed over and called again. There was no representation for both sides in the second call also. As mentioned supra, the writ petition was filed on 30.03.2004 and therefore, the same has been pending in this Court for more than one decade and three years.

6 Considering the nature of the matter, adjourning such matters merely for non appearance of counsel, that too on more than one occasion, in my opinion, only contributes avoidable delay in disposal of other matters (by clogging the list) and it only cause an avoidable addition to arrears. Therefore, I deem it appropriate to examine the matter on available records and dispose of the writ petition on merits.

7 As referred to supra, the impugned order is an order of suspension, as the trial in a criminal offence was underway qua the writ petitioner. The impugned order mentions that it has been passed in exercise of powers under Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the 'said rules' for the sake of clarity).

8 A perusal of the said rules reveals that the impugned order is traceable to sub-clause (b) of Rule 10(1) of the said rules. For the sake of convenience, I extract the rule, which reads as follows :

"10.Suspension

(1)The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension--

(a)where a disciplinary proceeding against him is contemplated or is pending; or

(aa)where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b)where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Controller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made."

9 A perusal of the affidavit shows that it is the admitted case of the writ petitioner that a criminal case in Crime No.3 of 2001 on the file of 'D' Nagar Police Station, Pondicherry was registered against her and another colleague for offences under Sections 48, 471 of the Indian Penal Code ('IPC' for brevity) read with Section 34 of the IPC. It is also the further admitted case of the writ petitioner, as is evident from the affidavit filed in support of the writ petition, that the case is pending trial. A perusal of the writ affidavit and the contents of the same reveals that the writ petitioner has assailed the impugned order primarily on the basis of alleged falsity of the criminal case against her. The only ground other than alleged falsity of criminal case is ground No.E, which reads as follows:

"E. The principles relating to passing an order of suspension stand clearly violated in the instant case. The power conferred under Sub-Rule (1) of Rule 10 of the CCS (CCA) Rules 1965 has been most improperly exercised in the instant case."

10 I have also extracted rule 10(1) of the said rules and observed that the impugned order has to be necessarily under Rule 10(1)(b) of the said rules.

11 In the light of the clear admission of the writ petitioner in the writ petition that the aforesaid criminal case is pending against her and her colleague and that the trial is underway, I find no reason as to why exercise of power by respondent under Rule 10(1) is improper. I have already extracted supra that the impugned order is traceable to sub-clause (b) of Rule 10(1) of the said rules.

12 Therefore, I am convinced that the writ petitioner has not made out any case for quashing the impugned order. However, I have also noticed the fact that the writ petitioner was 57 years old when the writ petition was filed way back in 2004. The criminal case in which the trial was underway against the writ petitioner is in C.C.No.168 of 2003 on the file of the Judicial Magistrate-II, Pondicherry.

13 Therefore, at this distant point of time, the writ petition in all likelihood would have become infructuous and probably, that may be the reason for non appearance of counsel on both sides, but notwithstanding the fact that the matter may have become infructuous, the counsel on record have a duty towards court to report the same. However, I am not going to the same further. I express no opinion on whether the matter would or would not have become infructuous as I am disposing of the main writ petition on merits.

14 Though suspension for such a long period would definitely be a prolonged suspension, in the light of what I have stated supra, there is no need or necessity to go into that aspect of the matter either.

15 This writ petition is dismissed as bereft of merits. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

vvk

To

Principal-cum-Disciplinary Authority,
Mahatma Gandhi Dental College and
Hospital,
Pondicherry-605 006.

W.P.No.8812 of 2004

SKV(CO)
sp(21/09/2017)