

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2017

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P. No.8838 of 2004

Dr.D.Shankunthala Raj

.. Petitioner

Vs.

1.The Commissioner of
Corporation of Chennai,
Chennai-600 003.

2.The Secretary to Government,
Public Health & Family Welfare Department,
Fort St. George,
Chennai-600 009.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for all records relating to the impugned order dated 29.5.1993 in proceedings by the first respondent in FW & MCH.C.No.DPC(T) (780)93 and also in G.O.(D)No.15 dated 7.1.2004 passed by the second respondent on appeal and to quash the same as illegal, arbitrary and unconstitutional in violation of the principles of natural justice.

For Petitioner : No appearance

For Respondents: No appearance for R-1

Ms.Vasudha Thiagarajan for R-2

ORDER

On the date of filing of the writ petition way back on 29.03.2004, i.e., nearly three years and a decade ago, the writ petitioner was serving as an Assistant Surgeon in the Corporation of Chennai. Disciplinary proceedings were initiated against the writ petitioner inter-alia for unauthorised absence from night duty on 20.02.1993, which was detected in an inspection. The disciplinary proceedings that followed the inspection and detection, culminated in an order dated 29.05.1993 bearing reference FW & MCH.C.No.DPC(T) 789/93 made by the first respondent, which shall hereinafter be referred to as the 'first impugned order' for the sake of convenience.

2 In and by the first impugned order, the first respondent had held that the charges levelled against the writ petitioner are proved and ordered stoppage of increment for a period of three years with cumulative effect and also held that the period for which increment has been stopped will be inclusive of any interval spent in leave before the period is completed.

3 The writ petitioner preferred a departmental appeal dated 30.08.1993 to respondent No.2 in this writ petition. As the departmental appeal was not taken up for a very long time, a writ petition was filed, being W.P.No.22350 of 1993 and this court on 9.11.2001 directed the appellate authority (respondent No.2 before me) to dispose of the departmental appeal of the writ petitioner dated 30.8.1993 in accordance with law within a period of eight weeks. Thereafter, the appellate authority (second respondent before me) woke up from slumber and dismissed the appeal, confirming the aforesaid first impugned order. This order of the appellate authority is dated 7.1.2004 being G.O.(D)No.15, Health and Family Welfare (DI) Department and the same is hereinafter referred to as the 'second impugned order' for the sake of convenience and clarity.

4 When the matter was last listed before me on 12.7.2017, the following order was passed :

"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 second call also. Post for dismissal whenever the matter is listed in due course."

5 The above order speaks for itself. Notwithstanding the above order, the Registry has not posted the matter under the caption 'for dismissal' today. However, today when the matter was called, while there was no representation for the writ petitioner and respondent No.1, Ms.Vasudha Thiagarajan, learned Additional Government Pleader was present on behalf of respondent No.2. The matter was passed over and called later. The position remain unchanged in the second call also.

6 Adjourning such matters, particularly which are more than 13 years old, merely for non appearance of counsel, only contributes to an avoidable delay and avoidable addition to arrears in Courts. Therefore, I proceed to hear the matter on merits with available records and on the basis of submissions of the learned Additional Government Pleader appearing for respondent No.2.

7 As stated supra, at the relevant point of time, the writ petitioner was serving as a medical officer in the

Kotturpuram Health post. During night inspection in the Saidapet Maternity ward, the writ petitioner was absent without prior intimation, without making alternative arrangement and without informing the Zonal Officer. Therefore, after issuing a memorandum, disciplinary proceedings were initiated against the writ petitioner. In the disciplinary proceedings, four charges were framed and the same read as follows :

"1.that you Dr.(Tmt) Shankunthala Raj did not attend the night duty on 20.2.1993 at Saidapete maternity Ward.

2.that you had purposely avoided the night duty on 20.2.1993 stating that night duty roster was not intimated to you.

3.that you have dislocated the night duty on 20.2.1993 at Saidapet Health Post.

4.that you being the responsible officer failed to executive the duty."

8 Writ petitioner's response to the charges were examined and after detailed scrutiny, respondent No.1 passed the first impugned order holding that all four charges levelled against the writ petitioner stand proved. On that basis, respondent No.1 ordered stoppage of increment for a period of three years with cumulative effect.

9 As aforesaid, respondent No.1 also held that the period for which increment was stopped will be inclusive of any interval spent in leave before the period is completed.

10 As aforesaid, a departmental appeal was filed and the same was disposed of after directions from this court. In the departmental appeal, according to respondent No.2, who is the appellate authority, as the connected papers were transferred to the Government in Municipal Administration and Water Supply Department as early as 1995 and as the said papers were not readily available, respondent No.2 examined the case with available papers.

11 On the basis of available papers, respondent No.2 vide the second impugned order has confirmed the first impugned order. Therefore, there is not much discussion in the second impugned order. This takes us back to the first impugned order.

12 With regard to charge No.1, response of the writ petitioner was that she was not informed about her night duties either by a circular or by any other method and her absence was therefore not deliberate, but due to innocence. In other words, it was writ petitioner's plea that she was not aware at all that she was given night duties.

13 To this, respondent No.1, on scrutiny of records, held that instructions were in fact issued to medical officers

about night duty and they should make alternate arrangements in consultation with the zonal officer in case of emergency leave. Respondent No.1 has held that it is entirely the responsibility of the individual to take note of the night duty posting. Further more, respondent No.1 has also found that even prior to 20.2.1993 (when the writ petitioner was found absent), she had attended night duty on 4.2.1993 establishing that she was aware of her night duty postings and therefore, held that her explanation to charge No.1 is not satisfactory and held charge No.1 to be proved.

14 With regard to charge No.2, the response of the writ petitioner was that night duties are prepared purely on temporary basis and on trial method and that difficulties, which officers come across in implementation of such duties, have to be considered. To this, respondent No.1 held that this is no answer to charge No.2, as the writ petitioner has not given any explanation for her failure to attend night duty on 20.2.1993.

15 With regard to charge No.3, response of the writ petitioner was that she was not in-charge of Kotturpuram and therefore, she was under the impression that she would not be posted as duty doctor to do night duty in a duty centre which is no way connected with her. Respondent No.1, on scrutiny of records, has found that the Family Welfare and Child Welfare Centers have been integrated with effect from 1.4.1989 and therefore, an Assistant Surgeon / Medical Officer, who is posted in Kotturpuram, has to necessarily attend the work in Saidapet too. On this basis, respondent No.1 held that charge No.3 also stands proved.

16 With regard to charge No.4, it appears that the writ petitioner has not given any proper explanation and therefore, respondent No.1 held that charge No.4 is also proved in view of dislocation (charge No.3 having been proved).

17 The writ petitioner is a medical doctor and is a responsible officer. Being an Assistant Surgeon / Medical Officer, responsibilities and duties are very sanctus and sacrosanct.

18 In the light of all that have been alluded to supra, I find no infirmity or illegality in the first impugned order. Learned Additional Government Pleader also pointed out that no grounds raised in the affidavit filed in support of the writ petition are tenable to say that the first impugned order is bad and is liable to be interfered with. As stated supra, the first impugned order has been confirmed by the second impugned order on the basis of available records.

19 To be noted, the punishment imposed was stoppage of increment for three years with cumulative effect.

20 Owing to all that have been stated supra, I find no tenable ground to interfere with the first and second impugned orders.

21 The writ petition is bereft of merits and the same stands dismissed. No costs.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

vvk

To

1. The Commissioner,
Corporation of Chennai,
Chennai-600 003.
2. The Secretary to Government,
Public Health & Family Welfare Department,
Fort St. George,
Chennai-600 009.

+1 CC to Govt. Pleader sr 65629.

W.P.No.8838 of 2004

VGII (CO)
sp (19/09/2017)

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