

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.25516 of 2012

S.Prema

... Petitioner

Vs.

- 1.The Director of Public Health & Preventive Medicine,
Teynampet, Chennai - 6.
- 2.The Deputy Director of Health Services,
Viswanathapuram,
Madurai District.
- 3.The Secretary to Government,
Health Department,
Secretariat, Chennai - 9. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the orders passed by the 1st respondent in Na.Ka.No.67428/ONa/09/ERU3/3, dated 05.10.2010 received on 2.12.2010 and the orders passed by the 2nd respondent made under Na.Ka.No.7185/A4/96, dated 6.4.2009, quash the same and consequently direct the respondents herein to treat the period from June, 1990 to December, 1998 as compulsory wait for issuance of posting orders and treat as duty for all purposes and grant her all service and monetary benefits for which she is entitled.

For Petitioner : Mr.M.Ravi

For Respondents: Mr.S.Gunasekaran
Additional Government Pleader

ORDER

The petitioner has approached this Court for seeking the following reliefs:

to issue a Writ of Certiorarified Mandamus to call for the records of the orders passed by the 1st respondent in Na.Ma.No.67428/ONa/09/ERU3/3, dated 05.10.2010 received on 2.12.2010 and the orders passed by the 2nd respondent made under Na.Ka.No.7185/A4/96, dated 6.4.2009, quash the same and consequently direct the respondents herein to

treat the period from June, 1990 to December, 1998 as compulsory wait for issuance of posting orders and treat as duty for all purposes and grant her all service and monetary benefits for which she is entitled.

2.The case of the petitioner is that she was appointed as Village Health Nurse in the Health Department and joined duty in the Public Health Centre, Natham Ullappakudi, Madurai on 08.02.1982. She was thereafter transferred from Natham to Primary Health Sub-Centre, Kosukurichi as per the proceedings dated 18.03.1993 by the District Health Officer, Madurai. It appears that thereafter the petitioner had gone on leave without proper intimation to the authorities concerned.

3.According to the counter affidavit filed by the 1st respondent, the petitioner was on unauthorised absence from 10.08.1983. After a period of 13 years, she had requested for reposting her on 10.07.1996. According to the petitioner, she had taken leave for such a long period on medical grounds. According to the respondents, no such proof was filed by the petitioner in support of her claim. In the meanwhile, it appears that the petitioner had approached before the Tamil Nadu Administrative Tribunal and obtained some orders in O.A.No.6655 of 1998 and based on which, posting was issued to her in 1998. A disciplinary action was initiated against her, for her unauthorised absence from 10.08.1993 vide proceedings dated 09.12.1998. A charge memo was also issued under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules thereafter.

4.In the enquiry conducted in pursuance of the charge memo, a report was filed holding that the charge was proved and thereafter, the disciplinary authority imposed the punishment of stoppage of increment for five years with cumulative effect. The said punishment is put to challenge in this writ petition.

5.According to the counter affidavit, the punishment imposed on the petitioner was on the basis of lenient view taken by the authority, notwithstanding the fact that the petitioner was absent for more than 13 years continuously without proper intimation. In spite of her long absence, the respondents had taken a lenient view and granted her posting and on the basis of conclusion of the disciplinary action, further lenient view was taken and punishment was imposed with a penalty of stoppage of increment for five years, of course, with cumulative effect.

6.Although the petitioner has come forward with this writ petition, challenging the said punishment by raising certain grounds, but the fact remains that the petitioner was absent for 13 long years continuously which conduct of the petitioner, cannot be condoned easily. Over and above her

conduct, the petitioner is emboldened to approach this Court to challenge the said punishment on certain grounds, which cannot be countenanced at all in law. The conduct of the petitioner on the face of it, requires to be deprecated for not having accepted the punishment in the first place, notwithstanding very serious misconduct committed by her. This Court therefore does not find any iota of scope for interference in the orders passed by the disciplinary authority imposing the impugned punishment. On the other hand, this Court is of the view that the authorities ought to have imposed much more severe penalty on the petitioner for the acts of misconduct for remaining absent for more than 13 years. However, this Court does not want to give any further direction to the authority on this count, since the punishment had already been imposed on the petitioner. However, the petitioner having approached this Court challenging the order of penalty, without realising her own conduct, which invited the punishment is to be reprimanded and therefore, this Court feels that in fitness of things, the cost of Rs.5,000/- (Rupees five thousand only) to be imposed on the petitioner for choosing to file the present writ petition against the order passed by the disciplinary authority.

7. Therefore, the Writ Petition is dismissed with cost of Rs.10,000/- to be paid by the petitioner to the Tamil Nadu Legal Services Authority, High Court, Madras, within a period of two weeks from the date of receipt of copy of this order. In case of default, the Legal Services Authority, High Court, Madras can initiate action against the petitioner for recovery of the amount as it may be advised with interest at the rate of 9% from the date it became payable till the date of realisation.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Sgl
To

1. The Director of Public Health &
Preventive Medicine,
Teynampet, Chennai - 6.
2. The Deputy Director of Health Services,
Viswanathapuram,
Madurai District.

3.The Secretary to Government,
Health Department,
Secretariat, Chennai - 9.

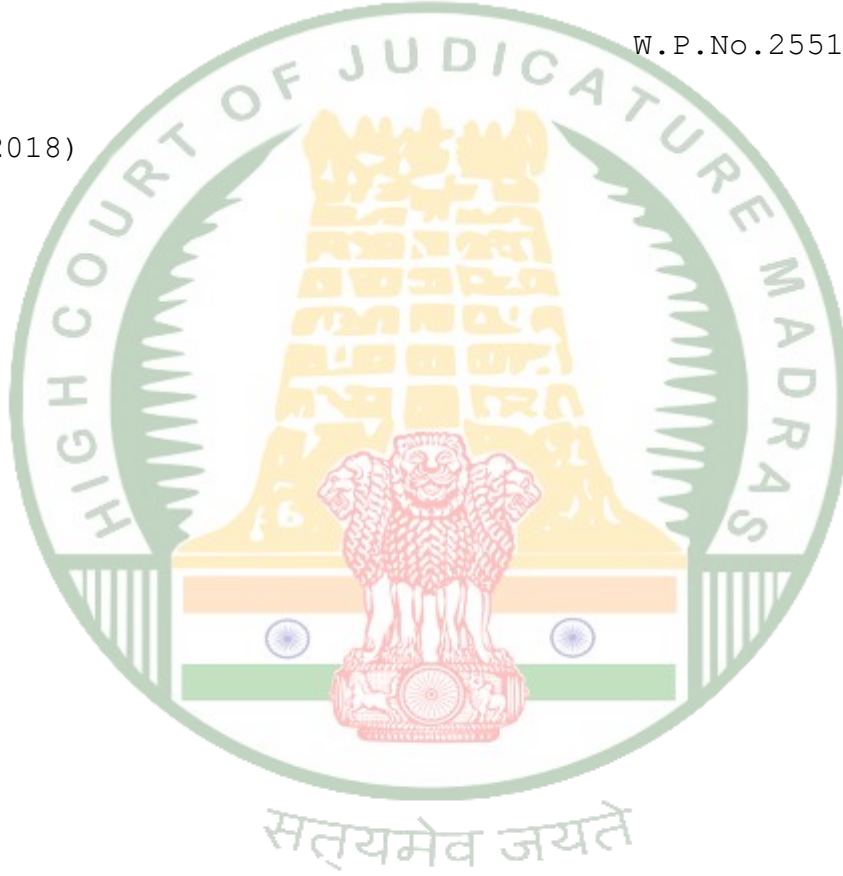
4. The Secretary, Tamil Nadu Legal Services,
Authority, High Court, Madras.

+ 1 cc to the Government Pleader Sr.89428

+ 1 cc to Mr. M. Ravi, Advocate SR.88910

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SS (CO)
EU (04/01/2018)



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