

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.13374 of 2013

Malaichamy

... Petitioner

- 1.The Secretary to the Government,
Health and Family Department,
Fort. St.George, Chennai - 9.
2. The Director of Medical and
Rural Health Services, Chennai-6.
3. The Joint Director of Health Services,
Ooty, Nilgiri District.
4. The Accountants General,
Chennai -18.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus directing the respondents to regularize the petitioner's services from 11.05.1973 to 21.03.1993 and from 13.12.1994 to 30.06.2002 with all monetary benefits together with interest.

For Petitioner : M/s.S.Arokia Maniraj

For Respondents : Mr.P.Raja
Government Advocate for R1 to R4

O R D E R

The instant writ petition has been filed for issuance of a Writ of Mandamus directing the respondents to regularize the petitioner's services from 11.05.1973 to 21.03.1993 and from 13.12.1994 to 30.06.2002 with all monetary benefits together with interest.

2.The petitioner joined the services of the respondent Government as a Pharmacist at the E.S.I.Dispensary, Thondiarpet, on 22.12.1967. He was transferred to Avadi E.S.I.Hospital on 13.04.1972. An audit was conducted by the Senior Accountant Officer and a shortage in stock was found. The petitioner was

held responsible. The charge memo was issued to the petitioner who denied his charges. The writ petitioner was issued a memo directing him to pay a sum of Rs.20,016/- The order was challenged in WP.No.2264 of 1981. This Court by its order dated 25.03.1988 allowed the writ petition observing as under:-

"8. In the instant case, the petitioner has stated in the affidavit about the extraordinary delay in completion of the disciplinary proceedings and this is not controverted in the counter filed by the respondents. The enquiry was commenced on 24.07.1976 and it was last held on 22.11.1976 and thereafter no progress has been made till the institution of the writ petition in 1981. It is common ground that adjournments alone were granted and no witness was examined in the enquiry to substantiate the charges levelled against the petitioner. Therefore, no enquiry worth the name had been over conducted against the petitioner. There is no evidence to show that any statement had been recorded from any witness or that any complaint had been filed with the concerned police station regarding the shortage of medicines worth Rs.20,000/- and add. Serious note has to be taken of the shortage in medicines and the person responsible has to be held guilty for having not taken proper care and caution, after carefully considering the entire evidence. A parallel criminal enquiry also ought to have been held in matters of this nature. If there had been proper check and supervision every day or at least once a week, disappearance of medicines of such a value could have been avoided. In the instant case, there seems to have been no steps taken in this direction by the Supervision Officials at periodical intervals, but all of a sudden they have woken up after a deep elumber and initiated disciplinary proceedings against the petitioner. Whether the petitioner is solely responsible and whether any other person has got a hand in the shortage of medicines, nothing is clear. The learned counsel for petitioner contended that even the charge memo against the petitioner does not disclose the required details. Learned counsel submits that the explanation submitted by the petitioner must be deemed to have been accepted by the respondents and that was the reason for the enquiry being held after years and even thereafter no progress was made for five years and then the present writ petition came to be filed. Under these circumstances, this Court, is of the view that the explanation submitted by the petitioner must be deemed to have been accepted by the respondents. The charge has to be quashed in the circumstances of the case.

The writ petition is accordingly allowed and the disciplinary proceedings are quashed. There will be no order as to cost."

3. Thereafter, the petitioner who was working in various hospitals joined as Pharmacist in the Government Hospital, Gudalur, Nilgiris District. He was placed on suspension on 13.12.1994 on the ground that he was involved in a criminal case in Cr.No.542 of 1994 before the Judicial Magistrate, Gudalur.

4. The petitioner was permitted to retire from services w.e.f. 30.06.2002. The petitioner was acquitted in the criminal case, but he has not allowed to join back. The petitioner therefore sought for regularization of service between 11.05.1973 to 21.03.1993 and from 13.12.1994 to 30.06.2002, with all monetary benefits. The learned counsel for the respondent has filed a calculation sheet states that the petitioner has been granted pensionary benefits and the suspension from 13.12.1994 to 30.06.2002, i.e., the date of acquittal has been regularized as duty vide G.O (D) No.154 dated 03.02.2015 of the H&FW Department.

5. Now only the issue is whether the case of absence from 11.06.1973 to 25.03.1975 are regularized or not. A perusal of the order of this Court in WP.No.2264 of 1981 would show that the charge memo against the petitioner for shortage of amount stands quashed. If that be so, the petitioner's service from 11.05.1973 to 21.03.1993 should be regularized. The writ petition is allowed. The respondents are directed to regularize the petitioner services from 11.06.1973 to 25.03.1975 with all monetary benefits. No Costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gsp/pkn
To

1. The Secretary to the Government,
Health and Family Department,
Fort. St. George, Chennai - 9.
2. The Director of Medical and
Rural Health Services, Chennai-6.

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3. The Joint Director of Health Services,
Ooty, Nilgiri District.

4. The Accountants General,
Chennai -18.

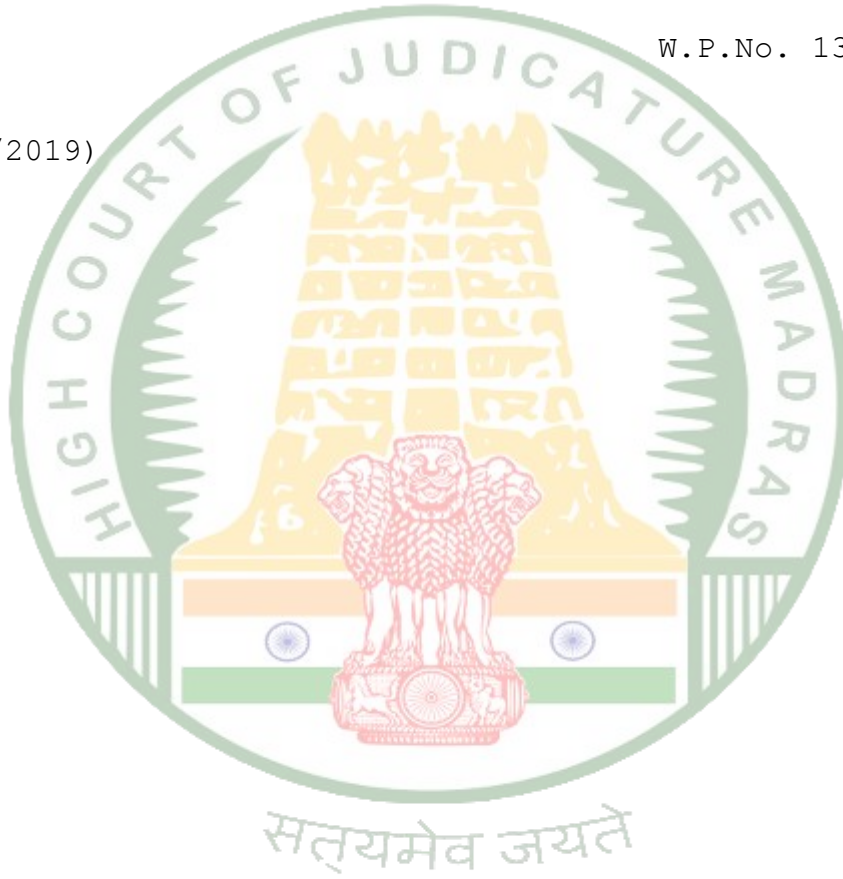
+1cc to Mr.S.Balaji, Advocate, S.R.No.86909

+1cc to Mr.S.Arokia Maniraj, Advocate, S.R.No.87263

+1cc to the Government Pleader, S.R.No.87430

W.P.No. 13374 of 2013

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GSP(22/01/2019)



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