

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1493 of 2015
and
M.P.No.1 of 2015

1. The State Government rep.by its Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.
2. The Director of Medical and Rural Health Services,
Chennai-600 006.
- 3.The Joint Director,
Government Headquarters Hospital,
Dharmapuri.
4. The Superintendent,
Government Headquarters Hospital,
Dharmapuri. Appellants

-vs-

K.A.Kanthasamy ... Respondent

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.16566 of 2007 dated 09.12.2014.

W.P.No. 16566/2007:

Writ Petition praying to writ of Mandamus to call for the records in call for the records in g.O.(D) No. 360 health and Family Welfare Department dated 11.07.2001 and G.O (D) No. 642 Health and Family Welfare Department dated 08/05/2003 passed by the 1st respondent and quash the same and direct the respondents to promote the petitioner as Joint Director from 28.12.1998 with all benefits and emoluments.

For Appellants ::Ms.V.Annalakshmi,
Government Advocate
For Respondent ::Ms.R.T.Shyamala

JUDGMENT
(Delivered by HULUVADI G.RAMESH, J.)

The respondent is a M.S.Graduate (General) and he joined duty in the Government Hospital on 11.04.1979. He was working as a Senior Assistant Surgeon in the Government Hospital at Krishnagiri. On 05.06.1996, when he was on night duty, a patient by name Mrs.Saravana was admitted in the hospital for labour pain and at 5.00 a.m., as a duty Doctor, the respondent sent a memo to Dr.Baby, Gynecologist to attend the said patient. According to the respondent, the said Gynecologist, Dr.Baby came to the hospital and attended the patient. The duty of the respondent was over at 7.30 a.m. Later, he came to know that the said patient died on 8.30 a.m. Subsequently, a charge memo, dated 22.05.1997, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued to the respondent alleging that he was negligent in his duties as a Duty Doctor. The respondent submitted his explanation denying the charge. It is stated by the respondent that as a Duty Doctor, he took all steps and on his initiative, the Gynecologist Dr.Baby attended the patient initially, but she did not follow up and went to her residence entrusting the work to a Staff Nurse, who did some procedures resulting in the death of the patient. According to the respondent, he was not responsible for the death of the patient and if at all anybody is responsible, it was the Gynecologist Dr.Baby and the Duty Nurse, who acted as per the direction of the Gynecologist and not the respondent. It was further stated by him that it was not brought to his notice about the absence of the Gynecologist, particularly, when the Gynecologist left on her own entrusting the work to a staff nurse.

2.Enquiry was conducted and based upon the findings of the Enquiry Officer, the respondent was imposed with the punishment of stoppage of increment for two years without cumulative effect by G.O.D.No.360 Health and Family Welfare (K1) Department, dated 16.03.2001. As against the said order, the respondent preferred a review petition and the same was also dismissed. Challenging the said orders, the respondent filed O.A.No.594 of 2004 before the Tamil Nadu Administrative Tribunal and on the abolition of the Tribunal, the matter stood transferred to this Court and renumbered as W.P.No.16566 of 2007.

3.The learned single Judge, after considering the facts and circumstances of the case, allowed the writ petition by quashing the orders impugned therein, by order dated 09.12.2014. Challenging the order passed by the learned single Judge, the present writ appeal has been filed by the State.

4.Amongst many grounds raised in the appeal, the learned Government Advocate appearing for the appellants has submitted that the learned single Judge ought to have considered that the punishment of stoppage of increment for two years without cumulative effect imposed on the respondent, commensurates with the gravity of charges even on the lesser side when compared to the loss of two lives and medical negligence of the respondent. She also submitted that the death might have been prevented if the Call Duty Obstetrician remained with the patient during the time of delivery. It is her further submission that as a Duty Medical Officer, the respondent should not have allowed the call Duty Obstetrician to leave the hospital after the drip was administered. Stating so, the learned Government Advocate prayed for quashing the impugned order passed by the learned single Judge in the writ petition.

5.The learned counsel for the respondent has submitted that the respondent, as a Duty Doctor, took all proper steps and on his initiative, the Gynecologist Dr.Baby attended the patient initially, but she did not follow up and went to her residence entrusting the work to a Staff Nurse, who did some procedures resulting in the death of the patient. It is also submitted that it was not brought to the notice of the respondent about the absence of the Gynecologist, particularly, when the Gynecologist left on her own entrusting the work to a staff nurse. Thus, according to the learned counsel for the respondent, the respondent has not committed any mistake.

6.Heard the learned counsel on either side and perused the materials available on record.

7.Considering the facts and circumstances of the case, the learned single Judge in his order in the writ petition has held as follows:

"11.In the discreet enquiry, witnesses were examined and the report of the discreet enquiry concludes that the Duty Doctor is also responsible. But the reading of the entire lengthy discreet enquiry report reveals that the Duty Doctor is not at all responsible. The discreet enquiry report, which runs to 6 pages, reveals that the Duty Doctor cannot be blamed for the unfortunate incident that took away the life of Mrs.Saravana. The said report really finds fault with the Gynecologist and the Duty Nurse. In fact, the concerned Gynecologist and the Staff Nurse, who were responsible for the incident were imposed only with the punishment of stoppage of increment for two years without cumulative effect.

12. In view of the fact that no witnesses were examined in the enquiry before the delinquent officer, I am of the view that the punishment imposed on the petitioner is liable to be quashed, as the same is in violation of Section 17(b) of the Rules. Rules 17(b) mandates that witness shall be examined in the presence of the delinquent. In fact in the charge memo, it is stated that no witness need to be examined as per Annexure 4 to the Charge Memo. Without any witness being examined, the Enquiry officer and the Disciplinary Authority cannot come to the conclusion that the petitioner committed mistake. Hence, the impugned orders are liable to be set aside."

8. From a reading of the above paragraphs in the impugned order, it is clear that the main responsibility was on the part of the gynecologist and the staff nurse who attended the delivery, at the relevant point of time. The stand taken by the learned Government Advocate is that the respondent has entrusted the work to Gynecologist and the gynecologist went away without giving any information and only the staff nurse had conducted the delivery which resulted in the death of the patient and the infant. However, on a common charge, all of them have been found guilty of negligence and they have been imposed with punishment of stoppage of increment for two years without cumulative effect. The learned single Judge has quashed the orders impugned in the writ petition on the ground that the discreet enquiry report found fault only with the Gynecologist and the Duty Nurse. The submission of the learned Government Advocate is that no witnesses were examined in the presence of the respondent, since the respondent himself has deposed that no witnesses need be examined in his presence. It is the further submission of the learned Government Advocate that along with the gynecologist and the staff nurse, the respondent is also equally responsible for the incident. But the fact remains that even though the respondent was eligible for promotion as Joint Director during the year 1998 itself, his name was not considered for promotion because of the pendency of the disciplinary action under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules as on that date. Considering the facts and circumstances of the case, the learned single Judge set aside the punishment imposed. It is also seen that even though the punishment was set aside and a direction was given to the authorities to give promotion to the respondent to the post of Joint Director from 28.12.1998 by the learned single Judge, the said directions have not been complied with, on the ground that against the order passed by the learned single Judge, the present writ appeal has been filed by the State.

9.Considering the entire factual matrix, this Court deems it fit to agree with the findings given by the learned single Judge that the punishment imposed on the respondent is illegal, on the ground that there is non-compliance of Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as no witnesses were examined in the enquiry in the presence of the delinquent officer. In these circumstances, the impugned order passed by the learned single Judge is confirmed and the writ appeal is dismissed. In view of the dismissal of this appeal, the respondents are directed to give promotion to the respondent to the post of Joint Director from 28.12.1998 notionally and consequently revise the pension, as ordered by the learned single Judge, and pay the arrears within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

KM

To

1. The Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.
2. The Director of Medical and Rural Health Services,
Chennai-600 006.
3. The Joint Director,
Government Headquarters Hospital,
Dharmapuri.
4. The Superintendent,
Government Headquarters Hospital,
Dharmapuri.

+1 CC to M/s.R.T. Shyamala, Advocate sr 18690.

+1 CC to Govt. Pleader sr 19220.

W.A.No.1493 of 2015
and

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SP(07/05/2018)