

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 4.7.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.701 of 2018
and
C.M.P.No.6734 of 2018

Dr.C.Mushtaq Ahamed

Appellant

Versus

1. The Principal Secretary to Government
Health & Family Welfare Department,
Fort St. George, Chennai 600 009.
2. The Principal Secretary and
Commissioner of Indian Medicine &
Homeopathy, Arumbakkam,
Chennai 600 106.
3. The Principal,
Government Unani Medical College,
Chennai 600 106.

Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.7.2017 passed in W.P.No.25210 of 2015 on the file of this court.

Writ Prayer: Writ petition filed under Article 226 of the Constitution of India for the issuance of a Writ of certiorari, Calling for the records pertaining to the charge memo issued by the Second respondent in Ref.No.7394/E2/1/2014 dated 13/07/2015.

For appellant : Mr.Haja Mohideen Gisthi
For respondents : Mr.R.Govindasamy
Special Government Pleader

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. Challenging the order passed by the learned Single Judge in dismissing the writ petition filed by the appellant seeking to quash the charge memo, the present writ appeal has been filed.

3. Before proceeding further, it is relevant to note that there are two charges framed against the appellant out of which, the main charge being charge No.1 which reads as under:-

"You(Prof.Dr.C.Mushtaq Ahamed), while working as Government Unani Medical College, Chennai, has left the country from 17.10.2012 to 25.11.2012 without getting proper permission and without sanction of leave from the Government."

4. The second charge happens to be a consequent one of the first charge viz., lack of sincerity and devotion to duty by the conduct narrated in the first charge.

5. The stand taken by the appellant is two fold. One being the undisputed fact that he had submitted the application seeking permission well in advance viz., 20 days prior to performing the tour and the same was forwarded to the authority seeking necessary approval, but, it was not accorded in time and the other being the G.O.(Ms) No.132, Backward Classes, Most Backward Classes & Minorities Welfare (S1) Department, dated 20.11.2012 exemption the Government Servants from getting 'No Objection Certificate'.

6. It appears that the charge relates to non-obtaining of NOC from the Government. The submission of the application by the appellant well in time and its pendency without any consideration leads to the presumption that the appellant has done his part to secure necessary permission. When the appellant had already sought for permission to perform the Haj pilgrimage, the consequences upon the inaction on the part of the authorities in considering the application seeking permission and passing some orders, which may be due to some technical or administrative reasons or even non-diligence on the part of the authorities, cannot be attributed to the appellant. However, the authority, without application of mind has proceeded to initiate action against the appellant by issuing the charge memo, which definitely warrants interference. Therefore, while setting aside the order passed by the learned Single Judge, the charge memo is quashed.

7. In the result, the writ appeal is allowed. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

ssk.

To:

1. The Principal Secretary to
Government
Health & Family Welfare Department,
Fort St. George, Chennai 600 009.
2. The Principal Secretary and
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Chennai 600 106.
3. The Principal,
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Chennai 600 106.

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate SR.No.43138
+1cc to Government Pleader SR.No.44081

W.A.No.701 of 2018

SS(CO)
GN(06/08/2018)



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