

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2018
PRONOUNCED ON : 17.09.2018

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24138 of 2008
and
M.P.No.1 of 2008

P.Gangadevi

.. Petitioner

vs

1.The State of Tamilnadu,
Rep. by the Secretary,
Health and Family Welfare Department,
Fort. St.George, Chennai-600 009.

2.The Director of Medical and
Rural Health Services,
DMS Compound, Chennai-6.

.. Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus to call for the records relating to the 2nd respondent's proceedings made in No.42529/SCII/1/2006 dated 18.10.2006, as confirmed by the 1st respondent in G.O.(D) No.519, Health and Family Welfare (K1) dated 06.05.2008 and to quash the same and consequently to direct the respondents to modify the punishment as voluntary retirement from services with effect from 06.05.2008 the date of appellate authority's order.

For petitioner : Ms.N.R.Jasmine Padma

For respondents : Mr.N.Inbanathan
Additional Government Pleader

O R D E R

The petitioner has filed the above writ petition to call for the records relating to the order/proceedings dated 18.10.2006 bearing reference No. 42529/SC II/1/2006 of the second respondent compulsorily retiring the petitioner from services as affirmed by G.O.(D) No. 519, Health and Family Welfare (K1) dated 6.5.2008 of the first respondent and to consequently treat the punishment of compulsory retirement meted on the petitioner as that of voluntary retirement from service with effect from 6.5.2008 being the date of dismissal of the petitioner's appeal by the first respondent.

2. The petitioner was working as a nursing tutor Grade-II with 2nd Respondent. The petitioner had joined Apollo College of Nursing to pursue M.Sc (N) on 31.5.2004. However, the petitioner was unable to cope up with the pressure and had to discontinue with the course with effect from 26.10.2004.

3. Under the circumstances, the petitioner was transferred to Madurai Medical College by a transfer order dated 8.11.2004 bearing reference No. 83908/N2/04 with immediate effect.

4. The petitioner refused to report to duty at the Madurai Medical College and requested that she be retained in any other college/hospital in Chennai due to her family situation in family.

5. The office the Directorate of Medical Health, by letter dated 4.3.2005 reportedly communicated to the petitioner the aforesaid posting order. However, neither the acknowledgement card nor the postal receipt of posting of the said letter was available as per the enquiry report. In the said letter it has been alleged that the petitioner had neither joined duty nor applied for leave.

6. Later, the petitioner was issued with a memo dated 14.3.2005 reference No.40467/E1/1/04 by the Dean to the Government General Hospital, Chennai.

7. In her explanation dated 21.03.2005 to the Dean, Government General Hospital, Chennai, and the petitioner has stated that on 31.5.2004 she was relieved to join M.Sc (N) at the Apollo College of Nursing. However, there she was harassed by co-students she was forced to discontinue and could not pursue with her higher studies. She therefore requested the Director of Medical Education to accommodate her college in any one of the government hospitals in Chennai on 27.10.2004.

8. Later, a memo dated 25.04.2005 was issued to the petitioner wherein it was stated that she had unauthorisedly absented from duty from 8.11.2004 till date and had disobeyed her superior by not joining duty as instructed in Memo No 83908/N 2004 dated 8.11.2004, the Director of Medical Education, Chennai. It was alleged that the petition violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules.

9. Meanwhile, the Director of Medical Education vide a letter dated 25.4.2005 bearing Ref.No.83908/N 2/04 dated 25.4.2005 directed the petitioner to attend transfer counselling on 10.5.2005 together with service certificate obtained from the Dean, College of Nursing, Madurai Medical College. The said memo was served on her advocate on 3.5.2005.

10. The petitioner had meanwhile filed Writ Petition No.13483 of 2005 and WMP.No.14784 of 2005 and prayed for a

direction to pass suitable orders on her representation dated 3.2.2005 and 4.4.2005 to consider her request for being accommodated in the city of Chennai. On 25.8.2005, the Court allowed Writ Petition No.13483 of 2005 and directed the respondents to dispose her representation in accordance with law.

11. In reply to the memo, a telegram was sent by the petitioner's advocate stating that the courts order was being disobeyed by insisting the petitioner to attend the transfer counselling on 10.5.2005.

12. In reply dated 10.5.2005 the Director of Medical Education replied saying that the petitioner's case was being considered sympathetically as she had not attended counselling fixed on 10.5.2005. Meanwhile contempt petition was also filed in the court by the petitioner.

13. The disciplinary authority appointed by the government considered the records and concluded that the petitioner had indeed disobeyed the orders of the superiors by not joining duty at the College of Nursing at Madurai and insisted on being posted in Chennai and subsequently initiated writ proceedings.

14. The disciplinary authority has concluded that the petitioner failed to maintain absolute integrity and thereby violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules hence, she deserves to be punished.

15. However, taking consideration for long service of 27 years, the disciplinary authority awarded punishment by way of the "compulsory retirement" with liberty to file an appeal to the Secretary to the Government, Health and Family Welfare Department, Secretariat Chennai. The petitioner again filed a Writ Petition in W.P.No.28197 of 2007 which was disposed on 24.08.2007.

16. Aggrieved by the said order the petitioner filed an appeal before the first respondent namely the Secretary to the Government, Health and Family Welfare Department, Secretariat Chennai.

17. In the appeal the petitioner stated that the punishment awarded was arbitrary and vindictive as the petitioner had approached the writ court to dispose her representation for being retained in Chennai and on account of the contempt petition filed by her due to the failure of the officers to consider her request.

18. It was further stated that the punishment was shockingly disproportionate to the alleged disobedience of the orders by the petitioner. The petitioner further requested for commuting the punishment meted out as "compulsory retirement" as that of voluntary retirement considering unblemished record of service of the petitioner.

19. The Director of Medical and Rural Health Services had obtained a copy of the appeal and called for the views Of the Tamil Nadu Public Service Commission. The Tamil Nadu Public Service Commission has concluded that the petitioner has taken the regulations very lightly and has disobeyed the orders of the superiors by continuing to remain absent despite being directed to report to duty.

20. Further uttered that family reasons cannot be accepted, as her unauthorized absence for a long period of time will not absolve her from the charges which have been held to be proved against her and that the petitioner has not put forth any fresh grounds to interfere. The commission also expressed its opinion that the punishment meted out by way of "compulsory retirement" from service for the charges held proved is lenient and therefore the appeal preferred by the appellant may be rejected as devoid of merits and advice the government accordingly.

21. Needless to state, the first respondent has not disposed the appeal filed by the petitioner independently and has relied upon the nothings of TNPSC.

22. In the writ petition for petitioner has further alleged that the respondent was aware of the difficulties expressed by the petitioner and decided not to consider the petitioner's grievance and instead issued memo.

23. Heard the learner counsel for the petitioner and the respondent. The learner counsel for the petitioner assails the impugned orders and submitted that the punishment meted out was unwarranted and in any event disproportionate to the alleged charge of failure to obey the orders of this period by reporting to duty at Madurai pursuant to the transfer order when indeed the petitioner had approached the court.

24. The petitioner's counsel further submitted that without considering the leave application filed by the petitioner, the petitioner was issued with the charge memo and that the impugned order was arbitrary inasmuch as the petitioner not only approached this court by way of a writ petition on an earlier occasion but also filed a contempt petition when the petitioner was asked to report for counselling in connection with the transfer.

25. The counsel for the petitioner submitted that the disciplinary proceeding was initiated even though the petitioner had applied for leave. Therefore, without rejecting the application for leave, entire exercise was vitiated. It was therefore, submitted that the respondents were not justified in ordering compulsory retirement of the petitioner for no fault of hers.

26. During the course of hearing the learned counsel for the petitioner submitted that the petitioner had applied for leave. Instead of allowing or rejecting the leave application memo was issued.

27. On going through the records of the case and the averments in the affidavit, it is noticed that the plea for leave is neither there in any of the documents nor in the impugned orders or in the writ petition. Therefore, it cannot be argued at this stage that the disciplinary proceedings were initiated even though the petitioner's leave application was pending and not disposed.

28. On the other hand, the petitioner refused to obey the transfer order to join duty at Madurai and had merely corresponded with the respondents to accommodate her in Chennai on account of her personal difficulty.

29. Per contra, the learned counsel for the respondent reiterated the impugned order and prayed for dismissal of the writ petition.

30. In this connection it may be apt to refer to the decision of the Hon'ble Supreme Court in Union of India v. H.N. Kirtania, (1989) 3 SCC 445 wherein it was held as follows:-

"5. After hearing learned counsel for the parties we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was no valid justification for issuing injunction order against the Central Government. The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. There was no good ground for interfering with the respondent's transfer."

31. Thus, it is clear that the petitioner has no right to demand posting to particular place unless the transfer order was illegal on the ground of statutory rules or on the ground of mala

fide. Transfer made in administrative ground or public interest and should not be interfered.

32. The petitioner being a nursing staff could not demand to be posted at a place of her choice as she was in a transferrable job. The petitioner had her reasons for not reporting to duty. However, these personal constraints on account of familial situation cannot come in the discharge of her duty owed to the Hospital.

33. In fact, the Petitioner was called for a counselling. Instead of attending counselling, the petitioner filed contempt proceeding to punish the officers to fall in line with her demands. These steps appear to be intimidate officers who were merely discharging their official duty. The respondent have exercised restraint and have ordered only compulsory retirement of the petitioner owing to the number of years of service the petitioner has put.

34. In Shyamlal V. State of Uttar Pradesh and another [AIR 1954 SC 369 at page 370], the Honourable Supreme Court has held that an officer who is compulsorily retired does not lose any part of the benefit that he has earned. On compulsory retirement he will be entitled to the pension etc. that he has actually earned. There is no diminution of the accrued benefit. A compulsory retirement therefore does not amount to dismissal or removal and, therefore, does not attract the provisions of Article 311 of the Constitution or of Rule 55 and Note 1 to Art. 465 A of the Civil Service Regulations is not repugnant to Art.311.

35. Thus, there is no punishment when a person is compulsorily retired from service.

36. The petitioner has not made out a case on the facts for the court to interfere with the impugned orders. Compulsory retirement of the petitioner for disobeying the transfer order appears to be justified on account of unauthorized absence by the petitioner and disobedience of the transfer order issued by the superior. Under these circumstances, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd/ia

To

1. The Secretary,
Health and Family Welfare Department,
Fort. St.George, Chennai-600 009.
2. The Director of Medical and
Rural Health Services,
DMS Compound, Chennai-6.

+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No.64197

W.P.No.24138 of 2008

AD(CO)

rrs 17/09/2018



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