

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.17864 of 2007
(O.A.No.1819 of 2004)

Noorunissa .. Petitioner

Versus

1. The Secretary to Government,
Health and Family Welfare Department,
Chennai - 600 009.
2. The Director of Medical Education,
Chennai - 600 010.
3. The Director and Superintendent,
IOG & Govt. Hospital for Women & Children,
Chennai - 600 008. .. Respondents

Prayer: Original Application filed before the Tamil Nadu Administrative Tribunal, praying for the issuance of writ of mandamus, directing the second respondent to appoint the petitioner as Assistant Engineer in the PWD in accordance to the rules and within a stipulated time. On abolition of the Tribunal, the Original Application was transferred to the file of this Court and re-numbered as W.P.No.17864 of 2007.

For Petitioner : No Appearance

For Respondents No.1 & 2 : Mr.Ravikumar
Addl. Government Pleader

For Respondent No.3 : Mr.M.Devedran
Senior Counsel

O R D E R

The petitioner has filed the writ petition challenging the order dated 01.11.1995, wherein the original authority imposed punishment of withholding of increment for a period of 3 years

with cumulative effect and the same was confirmed in G.O.No.(D) 220 H & HW dated 19.02.1996.

2.The case of the petitioner is that she entered into medical department service as regular staff nurse and joined duty in the year 1969 in Government Hospital in Egmore, Chennai-8. The petitioner's increments due from 1981 to 1994 as per 4th and 5th pay commission reports were not sanctioned, despite her request and periodical reminders. Though the petitioner is entitled for selection grade on completion of 10 years service in the post of nurse, the same has not been given and her placement in the seniority has also not been fixed and the same was not communicated till the date of superannuation on 31.10.1999.

3.Aggrieved by the factum of not sanctioning the above said benefits, the petitioner filed O.A.No.1670/1995, directing the respondents therein to sanction her periodical Annual increments pending from 1983 onwards, consequently to fix her pay and to disburse the arrears. No orders were passed in the disciplinary proceedings which were initiated in the year 1983 and because of that only the petitioner could not get the benefits for 11 years. The respondents were directed to complete the disciplinary proceedings initiated in the year 1983 within 4 weeks from the date of receipt of the Tribunal orders. In fact, the petitioner stated in that original application that she proceeded for going to Holy Mecca on privilege tour and after extending the leave, she rejoined the duty on 15.12.2013. When she was summoned, she submitted her resignation and the same was not accepted due to exigency of service. Accordingly, she prayed in O.A. for speedy remedy, since she has to retire from service.

4.While pending the above said O.A, the second respondent completed disciplinary proceedings vide R.No.49718/SC-II/80 dated 01.11.1995 imposing the punishment of stoppage of 3 increments for 3 years with cumulative effect and further effect on the pension also and observed that appeal remedy lies with the first respondent within 60 days.

5.Aggrieved by the punishment, the petitioner filed an appeal before the first respondent. However, the first respondent in her order in G.O.No.(D) 220 H & HW dated 19.02.1996 confirmed the punishment of stoppage of 3 increments and effect on pension. Thereafter, the petitioner reached superannuation on 31.10.1999 and the impugned order was passed. After the retirement, the petitioner filed the present O.A. in the year 2004 and the same on abolition of the Tribunal was transferred to the file of this Court and renumbered as present writ petition.

6.The sum and substance of the Counter Affidavit filed by the respondents are as follows:

The petitioner formerly worked as a nurse in the Institute of Obstetrics & Gynaecology and Government Hospital for Women & Children, Chennai. She was on unauthorised absence in the duty from 15.07.1981 to 14.12.1983, during that period she secured a job at Saudi Arabia without the knowledge of the Government. On enquiry the said facts were confirmed through M/s Santhosh Travels, Bombay, recruiting Agents for Ash-Sharg Hospital, Saudi Arabia. The said Agency requested the Director and Superintendent, Institute of Obstetrics & Gynaecology and Government Hospital for Women & Children, Chennai to send the experience certificate and No Objection Certificate in favour of the petitioner so as to enable them to continue her service in Saudi Arabia, vide their letter No.13788/S1/81, dated 12.09.1981. Simultaneously, the petitioner also submitted her resignation letter dated 19.10.1981. Thereafter, she has withdrawn her resignation letter on 12.06.1982. Immediately, after withdrawal of her resignation letter she had joined the duty on 15.12.1983. Thereafter, the disciplinary authority initiated disciplinary proceedings under rule 17(a) of Classification, Control and Appeal Rules and issued a charge memo dated 27.12.1984. On receipt of charge memo, the petitioner submitted her explanation, requested to forgive and also assured that this irregularities will not happen in future vide her explanation dated 21.01.1985. Further, the petitioner filed O.A.No.1670 of 1995 before the State Administrative Tribunal. The Hon'ble Administrative Tribunal directing the respondents wherein to conclude the disciplinary proceedings within four weeks from the date of receipt of this order.

7.Since, the respondents not concluded their disciplinary proceedings as directed by the State Administrative Tribunal, again the petitioner filed a C.A.No.288 of 1995 in O.A.No.1670 of 1995 and the same was disposed with the direction to complete the disciplinary proceedings within a period of six weeks. Again, the disciplinary authority converted a charge memo under rule 17(a) to 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and concluded the disciplinary proceedings by framing four charges against the petitioner.

8.After receipt of the explanation received from the petitioner, the inquiry officer submitted his report stating that charges are proved against the petitioner. Thereafter, the disciplinary authority obtained further explanation from the petitioner and imposed a punishment of three years stoppage of increment with cumulative effect was imposed on the petitioner vide Director of Medical Education Proc.No.49718/SCII/80, dated 01.11.1995. Against which the petitioner filed an appeal before

the appellate authority, the appellate authority confirmed the punishment imposed by the original authority.

9.Subsequently, the petitioner reached the age of superannuation on 31.10.1999 and she was allowed to retire from service on the same day. After lapse of 5 years, the present writ petition has been filed challenging the above order and the writ petition has to be dismissed on the ground of laches.

10.Though the original Authority imposed the punishment on 01.11.1995 and the same was confirmed by the Appellate Authority on 19.02.1996 and the petitioner has retired from service on 31.10.1999, the Original Application has been filed only in the year 2004 and there is no proper explanation for filing the O.A., after a lapse of five years.

11.The undisputed fact is that the petitioner was unauthorised absent from 15.07.1981 to 14.12.1983. The petitioner during the above said period secured a job in Saudi Arabia and the same was confirmed through Travels Agent. Since the petitioner enjoyed the job in abroad and earned huge money, thereafter she filed the resignation letter before the authority and subsequently, the same was withdrawn in order to continue her job. However, the inquiry officer as well as the original authority considered the matter elaborately and imposed punishment of three years and the same was confirmed by the appellate authority.

12.All the facts are well considered and the punishment was rightly imposed on the petitioner. This Court while exercising the power under Article 226 of the Constitution of India cannot re-appreciate the entire facts in a mechanical manner unless there are sufficient materials to show that it requires interference. In the present case, there is no material to show that the punishment imposed on the petitioner warrants interference.

13.Hence, the writ petition is dismissed. No Costs.

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Assistant Registrar(CS V)
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Sub Assistant Registrar

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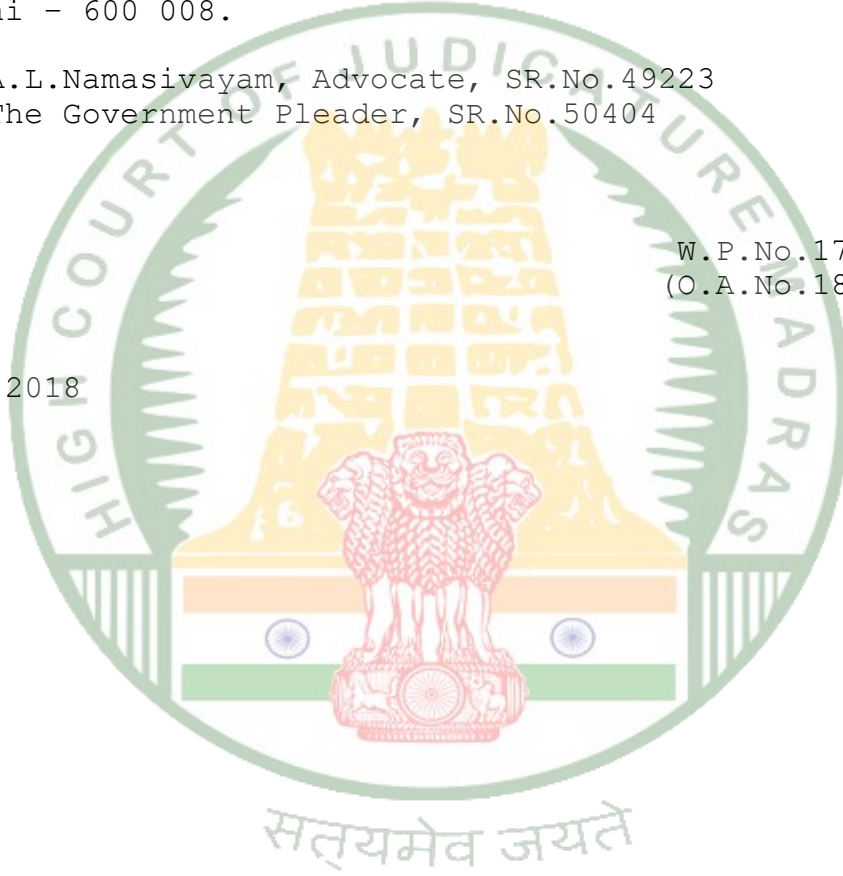
To

1. The Secretary to Government,
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Chennai - 600 009.
2. The Director of Medical Education,
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IOG & Govt. Hospital for Women & Children,
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+1 cc Mr.A.L.Namasivayam, Advocate, SR.No.49223
+1 cc to The Government Pleader, SR.No.50404

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CSL/23.10.2018



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