

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2560 of 2018

Dr.M.Indira

... Appellant

vs.

1.The Director of Public Health
and Preventive Medicine,
Chennai - 600006.

2.The Deputy Director of Health Services,
Sankarankoil, Tirunelveli District. ... Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order made in W.P.No.25816 of 2006, dated 19.06.2018.

WP.NO.25816/2006:

Writ Petition praying to Writ of Certiorari to call for the records relating to the impugned order of the first Respondent in R. No. 31770/PHC/9/2006 dt. 27.7.2006 and quash the same.

For Appellant : Mr.P.Mohanraj

For Respondents: Mr.P.S.Sivashanmugasundaram
Special Government Pleader.

JUDGMENT

(Judgment of the Court was made by SUBRAMONIUM PRASAD, J)

The instant writ appeal has been filed against the order made in W.P.No.25816 of 2006, dated 19.06.2018. The writ petitioner is the appellant herein. The writ petition was filed for a Certiorari, to call for the records relating to the impugned order of the Director of Public Health and Preventive Medicine, Chennai, in R.No.31770/PHC/9/2006, dated 27.07.2006, whereby the first respondent therein, directed a recovery of Rs.2,28,280/- from the writ petitioner.

2. The facts in brief are as hereunder:

Writ petitioner was working as a Medical Officer at Primary Health Centre, Kalingapatti. She was put on additional charge of the Primary Health Centre, Kuruvikulam. While she was working as in-charge, it was found that there were irregularities/misappropriation of GPF fund to the tune of Rs.3,31,880/-. A complaint was made by the Deputy Director of Health Services, Sankarankoil, before the Law Enforcing Agency. After registration of the criminal case against the officials, the Law Enforcing Officer, filed the charge sheet in which the name of the writ petitioner was not found as an accused. Departmental proceedings were initiated against the writ petitioner. The Director of Public Health and Preventive Medicine, Chennai, vide order dated 27.07.2006 in R.No.31770/PHC 9/2006, in a separate proceeding passed an order, for recovery of a sum of Rs.2,28,280/- from the appellant on the ground that the misappropriation of the money took place only because of the carelessness and lack of supervision on the part of the appellant herein. This order has been challenged in the present proceeding.

3. The departmental enquiry also ended against her and a punishment of stoppage of increment for a period of one year without cumulative effect was imposed on the writ petitioner.

4. Material on record discloses that, a criminal case in Crime No.12/2006 for offences under Sections 120(B), 409, 465, 468, 471 and 477 (A) of IPC, has been registered by Superintendent of Police, Tirunelveli District, against one Tmt.Leelavathi, Assistant and Mr.Vinobha, Store Keeper. Who are accused of misappropriation of funds. Proceedings are going on. It also transpires that the recovery proceedings were also initiated against three Doctors viz., Dr.V.Veerasamy, Dr.P.Subramanian and Dr.T.Alagesan. It also transpires that enquiry orders against Doctors viz., Dr.V.Veerasamy, Dr.P.Subramanian and Dr.T.Alagesan, were cancelled, vide proceedings in R.No.31770/PHC/9/2006 dated 27.07.2006. The writ petition was filed, stating that, she has not misappropriated any amount, and there could not be any order for recovery of money against her. Vide an impugned order in W.P.No.25816 of 2006 dated 19.06.2018, the learned Single Judge dismissed the writ petition, and upholding the recovery.

5. The learned Single Judge held that merely because a criminal case has not been filed, it will not amount to give clean chit to the writ petitioner and that the respondents should take certain disciplinary action on those who have not properly maintained the accounts for disbursing the GPF funds. The writ petitioner has challenged the said order.

6. The learned counsel for the appellant would contend that in the absence of allegation of misappropriation of money, the order for recovery could not be made against the appellant. On the other hand, the learned counsel for the respondents would contend that the records indicate that a sum of Rs.2,28,280/- was misappropriated due to lack of supervision on the part of the appellant and the order for recovery of amount does not call for any interference.

7. The respondents have initiated disciplinary proceedings against the appellant, for lack of supervision in administration, paving way for misappropriation/embezzlement of General Provident Fund account of the staff working in Government Primary Health Centre, Kuruvikulam, Sankarankoil Health Unit District, Tirunelveli District. The charge against the appellant has been proved and Government decided to impose a punishment of stoppage of increment for a period of one year without cumulative effect of the appellant.

8. Material on record indicates that the criminal proceedings have been initiated against those on whom there are allegations of misappropriation. Recovery has been made only against those persons who have misappropriated the amount. The appellant has been found guilty for lack of supervision. She was not involved in the offence misappropriation. For the lack of supervision, the appellant has already been imposed with a punishment of stoppage of increment for a period of one year without cumulative effect. The appellant therefore cannot be saddled with the order of recovery of money. Further, recovery orders against other persons viz., Dr.V.Veerasamy, Dr.P.Subramanian and Dr.T.Alagesan have been cancelled. The appellant is in the same boat. The order of recovery against the appellant, who was not involved in the misappropriation, but who is guilty of the charge of lack of supervision, for which she has already been punished for recovery of amount, is not correct and sustainable. Writ Appeal is therefore allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dm

To

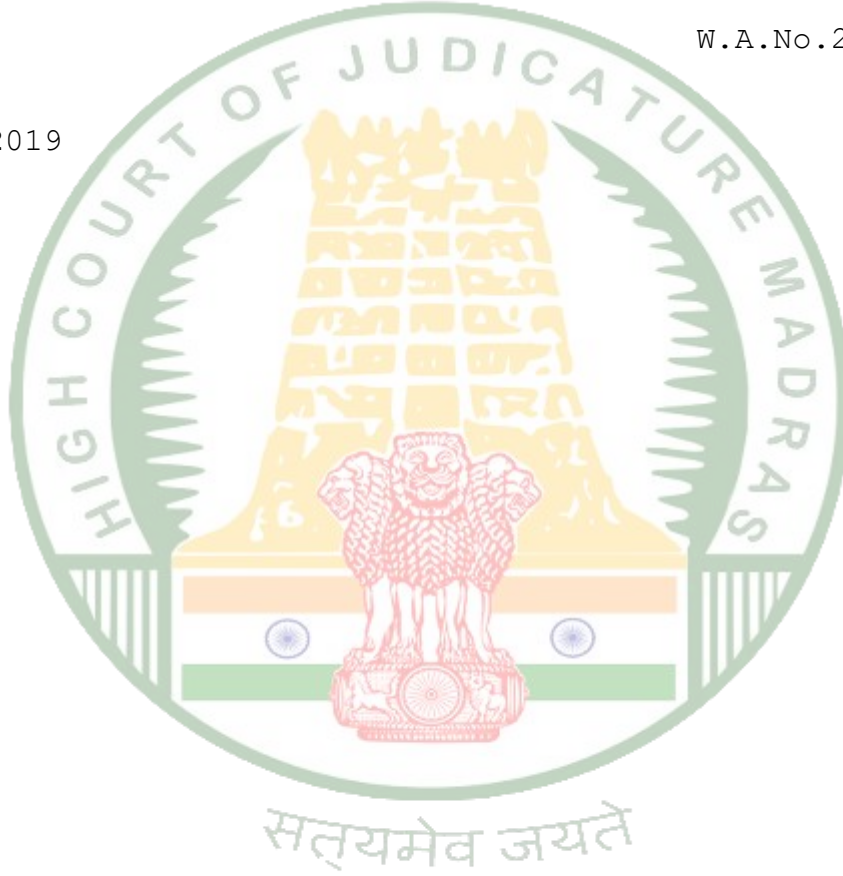
1.The Director of Public Health
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2.The Deputy Director of Health Services,
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+lcc to Government Pleader sr.no.82918

W.A.No.2560 of 2018

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