



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.1136 of 2018

and

WMP (MD) No.1216 of 2018

Thamizharasi

... Petitioner

Vs.

1.The Director of Public Health
and Preventive Medicine,
Chennai - 600 006.

2.The Deputy Director of Health
Services,
Thanjavur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to grant to all retirement benefits including pensionary and all other monetary benefits to the petitioner, who has retired from service on 30.11.2017.

For petitioner

: Mr.S.Deenadhayan

For respondents

: Mr.K.Saravanan,
Government Advocate

ORDER

The petitioner was appointed as a Village Health Nurse in the year 1984. She reached the age of superannuation on 30.11.2017. On the eve of her superannuation, she was issued with charge memo dated 28.11.2017. By another order dated 28.11.2017, the petitioner was informed that the disciplinary action initiated against her will be continued under Rule 9 of Tamil Nadu Pension Rules, 1978. The reason for issuance of such orders was the passing of decree dated 22.06.2009 in O.S.No.74 of 2007 against the petitioner herein.

2.The principal charge against the petitioner is that she had borrowed money from one Samundeeswary without prior permission. She was an erstwhile colleague of the petitioner. A decree of Rs.2,15,250/- has been passed on 22.06.2009. The decree was put to an execution. Garnishee order was passed. Therefore, a charge memo has been issued against the petitioner.



3.It is seen that the borrowal was of the year 2005. The suit was filed in the year 2007. Decree was passed in the year 2009. More than any thing else, a person who lent the money to the petitioner is also an employee in the same department. In these circumstances, initiating departmental action after a lapse of more than 12 years is clearly not justified. It is seen that the impugned disciplinary action was initiated only following the passing of garnishee order dated 20.11.2017. The Government has issued G.O.Ms.No.144, Personnel and Administrative Reform (N) Department, dated 08.06.2007 mandating that disciplinary action should not be resorted to on the eve of retirement of the Government employee.

4.In this case, the petitioner has also been allowed to retire. In the order of superannuation, it has been stated that the disciplinary action will be continued under Rule 9 of the Tamil Nadu Pension Rules, 1978. As per Rule 9, the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period if, in any departmental enquiry, the petitioner is found guilty of grave misconduct or negligence during the period of his service. Such is clearly not the case here. In fact, the issue on hand is entirely different. It has only happened on account of a private dealing.

5.The learned counsel appearing for the petitioner also informs that the said E.P has since been closed. It is needless to mention that the department will be bound by any garnishee order which the Executing Court has passed. He would further submit that the petitioner is negotiating with regard to the such borrowal and that depending on the terms of the said negotiation, she intends to settle the amount.

6.This undertaking given by the petitioner is recorded. In this view of the matter, the disciplinary proceedings initiated against the writ petitioner is quashed. Subject to the garnishee order passed by the Executing Court, the respondents are directed to disburse the pensionary benefits as well as the terminal benefits payable to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

7.This writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (Writs)

/True copy/



To

1.The Director of Public Health and Preventive Medicine,
Chennai - 600 006.

2.The Deputy Director of Health Services, Thanjavur.

+1cc to Mr.S.DEENADHAYALAN, Advocate, SR.No.48585

+1cc to M/s.Special Government Pleader,SR.No. 48992

W.P (MD) No.1136 of 2018
14.02.2018

SKM

KK/RSK/SAR-1/12.07.2018/3P-5C/