



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P(MD)No.1524 of 2018

S.N.Mohan

... Petitioner

Vs.

The Secretary to Government,
Health & Family Welfare (K2)
Department,
Secretariat, Chennai - 600 009.

... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondent i.e., the Secretary to Government, Health and Family Welfare Department, Chennai relating to the impugned orders passed in G.O(D)No.1025 Health and Family Welfare (K2) Department dated 10.10.2014 and G.O(D)No1544 Health and Family Welfare (K2) Department dated 04.08.2017 and quash the same and consequently direct the Government to send pension proposals of the petitioner within a specified time frame.

For Petitioner	: Mr.L.George Paul Anto
For Respondent	: Mrs.S.Srimathy, Special Government Pleader

ORDER

The petitioner is a retired Civil Surgeon. He joined service in the year 1986. He was issued with a charge memo dated 25.11.2004 containing two articles of charge. The substance of the charge memo is that the petitioner issued certificates to certain named individuals to enable them to claim income tax exemption. In the said certificate, the registration number, qualification and the designation of the petitioner were wrongly mentioned. By doing so, the petitioner acted in a manner unbecoming of a responsible Government official. The petitioner denied the said allegations. Enquiry was conducted. The enquiry officer held that the charges framed against the petitioner stood proved. The Government obtained explanation from the petitioner and referred the matter for opinion of the Tamil Nadu Public Service Commission. After getting opinion from the TNPSC, the Government issued G.O(D)No.1025 Health and Family Welfare Department dated 10.10.2014 imposing the punishment of cut in pension of a sum of Rs.200/- for a period of one year on the petitioner. Aggrieved by the said order, the petitioner herein filed a review. The review was rejected on 04.08.2017. Questioning the same, the present writ petition has been filed.



2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

3. The charge against the petitioner is that he issued false certificates in favour of certain named individuals to enable them to claim exemption under the Income Tax Act. The enquiry officer chose to give findings against the petitioner on the premise that the petitioner did not discharge the burden of proof cast on him while cross examining the witnesses. The Government also while imposing the punishment of cut in pension reasoned as under :

"While cross examination also Dr.S.N.Mohan has not objected that he has not issued the medical certificates and he could not bring out any evidence or reply from them to disprove the charges framed against him such as unethicial medical practice, causing loss to Government exchequer, furnishing of wrong registration number, qualification and designation."

4. Thus, both the enquiry officer as well as the disciplinary authority have approached the entire issue by erroneously casting the burden of proof on the delinquent. It is true that the standard of proof in a departmental enquiry is completely different from the standard of proof that obtains in civil and criminal proceedings. But, even in a departmental enquiry, it is the disciplinary authority who bears the burden of establishing the charges framed against the delinquent. This primary burden can never be shifted. In the present case, the authorities have approached on the erroneous premise that the petitioner has to disprove the charges framed against him. The disciplinary authority has also wrongly assumed that the petitioner did not contest the assertion that he issued medical certificates in question.

5. This Court went through the entire materials on record. The petitioner has been taking a consistent stand from the very beginning that he did not issue the said medical certificates in question. When such is the stand of the petitioner, it is strange that the government should observe in the impugned Government Orders that he did not deny the issuance of medical certificates in question. This is the sheet anchor of the impugned order. But, this assumption is factually incorrect.

6. The learned counsel for the petitioner took the Court through the entire deposition. It is seen that except one witness, all the other witnesses consistently stated two things. Firstly, they did not make any payment to the delinquent, to obtain the certificates in question. Secondly, they never obtained the certificates in question directly from the petitioner. According to them, their relative procured the certificates. The said relative is no more. Therefore, there is nothing on record to show that the petitioner actually issued the said certificates in question.



7. The charge framed against the delinquent is that he issued false medical certificates. The petitioner's defence was one of total denial. Therefore, in the very nature of things, the disciplinary authority ought to have obtained forensic opinion in the matter. In this case, no independent material has been forthcoming from any quarters to come to the conclusion that it was the petitioner who issued the certificates in question. Therefore, there is no legally acceptable evidence on record to fasten guilt on the petitioner.

8. In this case, the matter was referred to the TNPSC for its opinion. The Secretary, TNPSC vide letter dated 25.07.2014 accepted the finding of the Government and agreed with the punishment proposed. The Government passed final order dated 10.10.2014 after further examining the case along with the views of TNPSC. It has been held by the Hon'ble Supreme Court in the decision reported in (2011) 4 SCC 589 (**Union Of India & Ors vs S.K.Kapoor**) that if the authorities consulted the Union Public Service Commission and relied on the said report of the UPSC, then a copy of the said report must be supplied in advance to the employee concerned. Otherwise, it will amount to violation of principles of natural justice. If the said report is not relied upon by the authorities, then it need not be supplied to the employee concerned. In the present case, as it is evident from the G.O.(D)No.1025 dated 10.10.2014, the Government had relied upon the report of TNPSC. Admittedly, a copy of the said report was not furnished to the petitioner. Therefore, as held by the Hon'ble Supreme Court in the aforesaid decision, the impugned order is vitiated on that account also.

9. The learned counsel appearing for the petitioner submits that the petitioner enjoyed an impeccable track record. He would also point out that there was no loss of revenue to the Government. More than anything else, none of the witnesses deposed that they gave money to the petitioner for procuring the said certificates. The punishment imposed on the petitioner is mere cut in pension of Rs.200/- per month for a period of one year. Though the monetary impact on the petitioner is very negligible, it is to vindicate his honour that he filed this writ petition.

10. This Court has already given a finding that there was no legally acceptable material to render a finding of guilt on the petitioner. The orders impugned in this writ petition are quashed. The writ petition is allowed. No costs.

Sd/-
Assistant Registrar (AS)

/True Copy/



To

The Secretary to Government,
Health & Family Welfare (K2)
Department,
Secretariat, Chennai - 600 009.

+1cc to Mr.L.George Paul Anto, Advocate SR.No.54762
+1cc to SPECIAL GOVERNMENT PLEADER,IN SR.No.55232
SKM
MK/SKN RSK/SAR 1/22/03/2018/4P/4C

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