

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.03.2019

CORAM
THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.12349 of 2009

D.Sethuramachandran

...Petitioner

Vs

1.The Secretary to Government,
Health and Family Welfare Department
Secretariat, Chennai-600 009.

2.The Director of Medical Education,
Chennai-600 010.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in G.O.(D)No.677 Health and Family Welfare Department dated 03.06.2008 on the file of the first respondent and quash the entire disciplinary proceedings.

For Petitioner : Mr.N.Krishnakumar

For Respondents : Mr.K.Ravikumar,
Additional Govt.Pleader for R1

Mr.K.Karthikeyan,
Government Advocate for R2

ORDER

This writ petition has been directed against the correctness of the impugned order dated 03.06.2008 passed by the first respondent, finding the petitioner guilty and imposing a punishment of removal from service for the three proven charges against the petitioner.

2.The learned counsel for the petitioner, assailing the impugned order, would submit that the petitioner was serving as Assistant and posted at Madurai Medical College, Madurai in the year 1988 and during the period 1988-1999 he was serving in the MGR Medical University, Chennai on deputation. From 03.06.1997, he was transferred to Madurai Medical College Men's Hostel, which is under the administrative control of the Director of Medical Education, the second respondent herein. By proceedings dated 24.07.2000, the Director of Medical and Rural Health Services, who is the appointing authority, promoted the petitioner as Superintendent and released to Directorate of

Medical Education for posting. The second respondent issued the posting order to join at the Government Stanley Hospital, Chennai in the existing vacancy, on 27.07.2000. As the petitioner was in-charge of the hostel at that time, it became necessary to settle the accounts and hand over the charge to the incumbent. The volume of transaction for maintaining the hostel was huge. The petitioner was the only person to look after the receipts, maintenance and management and to maintain accounts, registers and ledgers, as the posts of Junior Assistant, Record Clerk and Office Assistant were vacant. The immediate superior officer of the petitioner was the hostel warden and the senior warden is the custodian and controlling authority and cheque drawing officer for the entire hostel expenditure, salary and other expenses. After the promotion order was released, the accounts warden and senior warden visited the office to verify the accounts in the registers. But they have not verified the huge volume of transactions that took place on daily basis for quite a long time. In the mean time, due to health condition, the petitioner went on medical leave and on medical fitness, he joined duty on 27.12.2000. In the above situation, during the reconciliation process, the accounts warden appears to have reported to the Dean about the discrepancies in accounting to the extent of Rs.9,41,575/-. Therefore, the petitioner was directed to remit the aforesaid amount by memo dated 16.11.2000 and also to submit the accounts on or before 17.11.2000. The petitioner, even before issuance of the memo, updated the accounts and connected registers for reconciliation in various heads of accounts and started remittances. He gave an explanation on 23.11.2000 wherein he also furnished the details of remittances and requested 10 days time for reconciling the entire accounts involving the total sum of Rs.9,41,575/-. Thereafter, he was placed under suspension on 27.12.2000 on the ground that the petitioner has committed misappropriation.

3.Questioning the correctness of the suspension order, the petitioner preferred an application in O.A.No.1446 of 2001 before the Tamil Nadu Administrative Tribunal and the Tribunal was also pleased to grant an interim order of stay on 22.02.2001 and it was made absolute on 08.03.2001, and thereafter, final order has been passed on 23.08.2002 in the said Original Application setting aside the prolonged suspension order of the petitioner. After revocation of suspension, the petitioner was posted at Stanley Medical College by proceedings dated 17.12.2002 and he joined duty on 19.12.2002. In the mean time, the second respondent issued a charge memo dated 03.12.2001 under Rule 17(b) of the Tamil Nadu Civil Service (D&A) Rules, containing the following three charges:

Charge-1:

that Thiru D.Sethuramachandran, Office Superintendent, Government Stanley Hospital, Chennai, while working as Assistant in Men's Hostel, Madurai

Medical College, Madurai from 1-4-97 to 13-12-2000 has misappropriated the hostel fund / Government money (i.e. the fees collected from the students of Madurai Medical College, Madurai) to the tune of Rs.9,41,575/- by falsifying the accounts and records and thereby cheated the Government.

Charge-2:

that Thiru D.Sethuramachandran, Office Superintendent (under suspension) Government Stanley Hospital, Chennai while working as Assistant in Madurai Medical College, Madurai from 1-4-97 onwards had indulged in perpetual misappropriation of Government money / Hostel fund and thus caused breach of trust by falsifying various cash registers and keeping the higher officials in dark with a view to swindle the Government money and thus acted in a manner unbecoming of a Government servant by violating Rule 20 of Tamil Nadu Government Servants Conduct Rules.

Charge-3:

that Thiru D.Sethuramachandran, Office Superintendent, Government Stanley Hospital, Chennai while working as Assistant in Men's Hostel, Madurai Medical College, Madurai, in his explanation dated 19-11-2000, submitted to the Dean, Madurai Medical College, Madurai has accepted the non payment of fees collected from the Men's Hostel students to the PD and PWD Accounts, amounting a sum of Rs.9,41,575/- as pointed out in the Special Audit Paty, Directorate of Medical Education and also remitted a sum of Rs.7,34,048/- to the PD and PWD Accounts by accepting the misappropriation of Government money during the tenure till 13-12-2000. This indicate the guilt of misappropriation of Government money on your part and also remittance was made by you for the said amount in the bank in order to escape from the criminal action, thereby lost credibility to continue in the Government Service by your act of misappropriation of Government money said above.

4. The petitioner submitted his explanation to the charge memo on 07.01.2002. Since the explanation was not found to be satisfactory, the Enquiry Officer, on completion of enquiry, found the petitioner guilty of the above charges. Thereafter, the petitioner was issued with second show-cause notice for which he submitted his written explanation. The Disciplinary Authority, without advertng to the explanation, based on the report of the enquiry officer finding the petitioner guilty, imposed the order of removal from service. It is also stated that after the enquiry was over, the petitioner was kept under suspension for a long time and with an inordinate delay, they passed the order of removing the petitioner from service and

therefore, the impugned order has to be set aside.

5.A detailed counter has been filed on behalf of the respondents.

6.Heard the learned counsel on either side and perused the materials available on record carefully.

7.When the petitioner was serving as Assistant in the Madurai Medical College from 01.04.1997 to 13.12.2000, he has misappropriated the hostel fund / Government money, viz. the fees collected from the students of Madurai Medical College, Madurai, to the tune of Rs.9,41,575/- by falsifying the accounts and records and thereby cheated the Government. Moreover, he has also indulged in perpetual misappropriation of Government money / Hostel fund and caused breach of trust by falsifying various cash registers and keeping the higher officials in dark with a view to swindle the Government money and thus acted in a manner unbecoming of a Government servant by violating Rule 20 of Tamil Nadu Government Servants Conduct Rules. That apart, he has, in his explanation dated 19.11.2000, submitted to the Dean, Madurai Medical College, Madurai has accepted the non payment of fees collected from the Men's Hostel students to the PD and PWD Accounts, amounting a sum of Rs.9,41,575/-, as pointed in the Special Audit, and also remitted a sum of Rs.7,34,048/- to the PD and PWD Accounts by accepting the misappropriation of Government money during the tenure till 13.12.2000. This indicates the guilt of misappropriation of Government money on the part of the petitioner. Thereafter, the petitioner submitted his explanation to the charge memo on 07.01.2002, but since the explanation was not satisfactory, the petitioner was departmentally proceeded with by the Enquiry Officer and on completion of enquiry, the charges framed against the petitioner were proved. For the proven charges, the Government have arrived at a provisional decision to impose the punishment of removal from service on the petitioner. Thereafter, the Tamil Nadu Public Service Commission was also consulted for its views under Regulation 18(1)(b) (iv) of Tamil Nadu Public Service Commission Regulations, 1954. The Commission, after going through all the records carefully and also the remittances made by the petitioner to the tune of Rs.7,34,048/- in three spells within a short duration of 10 days, came to the conclusion that there are no valid grounds to deviate from the conclusion arrived at by the Government and accordingly advised the Government to go ahead with their provisional conclusion of imposing the punishment of removal from service on the petitioner. Accordingly, punishment of removal from service has been imposed on the petitioner. Though the petitioner has been imposed with punishment of removal from service on the three serious proven charges, more particularly, the petitioner has also admitted his guilt by remitting a sum of Rs.7,34,048/- to

the PD and PWD Accounts by accepting the misappropriation of Government money, no leniency could be shown by this Court.

8.This Court has taken note of the charges levelled against the petitioner that while serving as Assistant in the Men's Hostel, Madurai Medical College, from 01.04.1997 to 13.12.2000, he has misappropriated the hostel fund / Government money (i.e.the fees collected from the students of Madurai Medical College, Madurai) to the tune of Rs.9,41,575/- by falsifying the accounts and records and thereby cheated the Government and that while working as Assistant in Madurai Medical College, Madurai from 01.04.1997, he had indulged in perpetual misappropriation of Government money / Hostel fund and thus caused breach of trust by falsifying various cash registers and keeping the higher officials in dark with a view to swindle the Government money and that the petitioner has also accepted the non payment of fees collected from the Men's Hostel students and remitted a sum of Rs.7,34,048/- to the PD and PWD Accounts by accepting the misappropriation of Government money during the tenure till 13.12.2000, and also the fact that the Enquiry Officer has found him guilty of the charges, after conducting a detailed enquiry. Subsequently, the Tamil Nadu Public Service Commission was also consulted for its views under Regulation 18(1)(b) (iv) of Tamil Nadu Public Service Commission Regulations, 1954 and the Commission, after going through all the records carefully and also the remittances made by the petitioner to the tune of Rs.7,34,048/- in three spells within a short duration of 10 days, came to the conclusion that there are no valid grounds to deviate from the conclusion arrived at by the Government and accordingly advised the Government to go ahead with their provisional conclusion of imposing the punishment of removal from service on the petitioner, based on which the punishment imposing removal from service, has been imposed upon the petitioner.

9.When the Government has imposed the punishment of removal from service on the petitioner, this Court, sitting under Article 226 of the Constitution of India, cannot interfere with the said decision taken by the Government, as this Court finds no merit in this writ petition.

10.In the result, the writ petition fails and accordingly it is dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Secretary to Government,
Government of Tamil Nadu
Higher Education Department
Fort St.George, Chennai-600 009.
2. The Director of Medical Education,
Chennai-600 010.

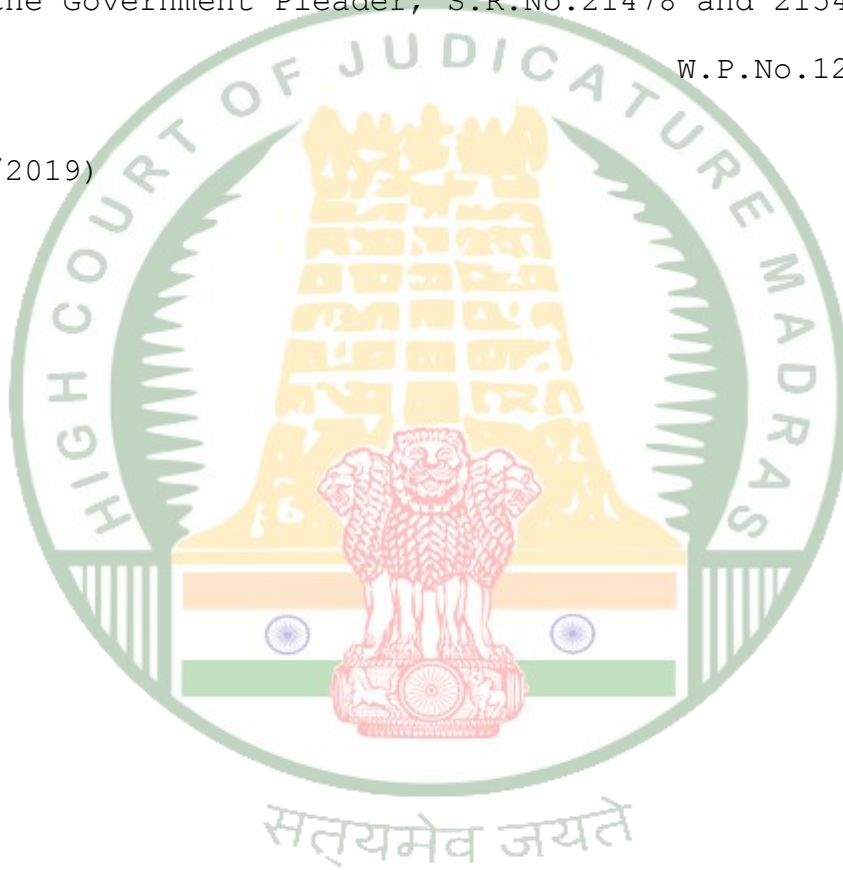
+1cc to Mr.N.S.Nandakumar, Advocate, S.R.No.20847

+2ccs to the Government Pleader, S.R.No.21478 and 21540

W.P.No.12349 of 2009

SSV(CO)

RRS (15/04/2019)



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