

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.17325 & 17326 of 2009

Dr.S.Doraiswami

.. Petitioner in both the Writ
Petitions

-vs-

State of Tamil Nadu
rep by Secretary to the Government
Health and Family Welfare Department
Fort St.George
Chennai 600 009

.. Respondent in both the Writ
Petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to G.O.(D) Nos.1021 & 1020, Health and Family Welfare (D2) Department dated 29.9.2006 respectively, on the file of the respondent herein, quash the same and consequently direct the respondent herein to pay all monetary and attendant benefits to the petitioner herein from 29.9.2006.

For Petitioner :: Mr.T.Chellapandian for Mr.V.Rajesh

For Respondent :: Mr.K.Ravikumar
Additional Government Pleader

ORDER

The petitioner has filed these two writ petitions challenging the G.O.(D) Nos.1020 & 1021, Health and Family Welfare (D2) Department dated 29.9.2006. In W.P.No.17325 of 2009, he has challenged the order retaining him from service, without permitting him to retire on reaching the age of superannuation on 30.9.2006 and in W.P.No.17326 of 2009, he has challenged the order of suspension. Hence, both the writ petitions are taken up together for common disposal with the consent of the learned counsel on either side.

2. When the petitioner was working as Civil Surgeon at the Government Primary Health Centre, Pachamalai, Salem, one day prior to his retirement on 30.9.2006, he was served with the order made in G.O.(D) No.1020, Health and Family Welfare (D2) Department dated 29.9.2006 by the Secretary to Government, exercising the power under sub-rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, placing the petitioner under suspension on the ground that an enquiry into grave allegation against him is contemplated. He was also served with another G.O.(D) No.1021, Health and Family Welfare (D2) Department dated 29.9.2006 issued by the Secretary to Government retaining him in service, without permitting him to retire on reaching the age of superannuation, until the enquiry into allegation against him is concluded.

3. Learned counsel for the petitioner, assailing the impugned orders, submitted that when the petitioner has not been informed of the reasons for his suspension, that too one day prior to his retirement, on a mere allegation that the petitioner was also instrumental for getting the Scheduled Tribe community certificate in favour of his son, when he was in no way connected and there was no evidence whatsoever or any preliminary enquiry was conducted leading to the conclusion that the petitioner was responsible for obtaining the Scheduled Tribe community certificate in favour of his son, taking the last resort to place the petitioner under suspension one day prior to his retirement, is wholly unjustified. The learned counsel for the petitioner also submitted that if there is any enquiry conducted against the correctness of the alleged certificate given in favour of his son after getting a definite report implicating the involvement of the petitioner in obtaining the said community certificate, only then, the respondent could have taken any action. But in the present cases, without there being any evidence or foundation, the petitioner has been placed under suspension and not allowed to retire from service. Moreover, he has been punished from the date of suspension till now for a period of about ten long years. The respondent has neither come forward to hold any enquiry nor even paid the provisional pension. The non-payment of the provisional pension itself clearly shows that the petitioner has been sufficiently punished. Therefore, treating the non-payment of provisional pension for the last ten years, the writ petitions have to be allowed. Now a report also has been filed by the Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem dated 19.11.2015 stating that the petitioner is no way connected, since his son on his own had taken steps to obtain the alleged Scheduled Tribe community certificate.

4. Heard the learned Additional Government Pleader for the respondent also.

5. In view of the fact that the petitioner was placed under suspension ten years ago, as a result, he has not even been paid with the provisional pension, for the reason that the State Level Scrutiny Committee has not taken a final call into the enquiry on the alleged community certificate issued in favour of the petitioner's son, this Court directs the Chairman, State Level Scrutiny Committee to complete the enquiry within a period of three months from the date of receipt of a copy of this order and on the basis of the final report going to be submitted by the Chairman, State Level Scrutiny Committee within the time stipulated in this order, the competent authority shall pass a final order on the impugned order of suspension issued against the petitioner. With this direction, the writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Health and Family Welfare Department
Fort St.George, Chennai 600 009
2. The Chairman
State Level Scrutiny Committee
Adi Dravidar and Tribal Welfare Department
Fort St.George, Chennai 600 009
3. The Deputy Superintendent of Police,
SC/ST Vigilance Cell, Salem

+1cc to Mr.V.Rajesh, Advocate, S.R.No.34172

+1cc to the Government Pleader, S.R.No.34021

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BS (CO)
CS/20/05/2019