

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.20948 of 2010

Dr.G.Malliga, M.B.B.S., DGO,
Government Hospital,
14, Kottapulipalayam Road,
Dharapuram, Thiruppur District. .. Petitioner

Vs.

- 1.The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.
- 2.Director of Medical and Rural Health Services,
Chennai - 600 006. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to punishment imposed by the 1st respondent in G.O.(D) No.728 HEALTH AND FAMILY WELFARE (K-1) DEPARTMENT, dated 19.09.2005 and quash the same and consequentially direct the respondents to grant notional promotion retrospectively on the date on which her junior was promoted as Civil Surgeon and grant all consequential retiral benefits, attendant benefits and other pensionary benefits.

For Petitioner: Mr.Edwin Prabakar
for Mr.R.Shiva Kumar

For Respondents: Mr.R.S.Selvam
Government Advocate

O R D E R

The petitioner has come out with the present Writ Petition to quash the punishment imposed by the first respondent in G.O. (D) No.728 HEALTH AND FAMILY WELFARE (K-1) DEPARTMENT, dated 19.09.2005 and consequently direct the respondents to grant notional promotion retrospectively on the date of which her junior was promoted as Civil Surgeon and grant all consequential

retiral benefits, attendant benefits and other pensionary benefits.

2. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the entire materials on record.

3. According to the petitioner, while she was working as Senior Assistant Surgeon, charges were framed under Rule 17(B) of Tamilnadu Civil Services (Discipline and Appeal) Rules for allegations of irregularity in Family Welfare Operation conducted during 1985 to 1989. The petitioner contended that the Government took policy decision to drop further action against Medical Officers involved in the irregularities during the year 1985-1989. The Government issued G.O.Ms.No.115, Health and Family Welfare Department dated 01.04.2008 and all the disciplinary proceedings pending were dropped.

4. According to learned counsel appearing for the petitioner, as per G.O.Ms.No.115, Health and Family Welfare D3 Department dated 01.04.2008, the punishment imposed on the petitioner has to be set aside and she is entitled to be promoted as Civil Surgeon and further as Senior Civil Surgeon when her junior was promoted. The learned counsel appearing for the petitioner contended that the petitioner was denied promotion on the ground that disciplinary proceeding was pending against her. When all the disciplinary proceedings pending against other Medical Officers were dropped by the Government vide G.O.Ms.No.115, Health and Family Welfare D3 Department dated 01.04.2008, the petitioner is entitled to promotion when her junior was promoted and prayed for allowing the Writ Petition.

5. The respondents filed counter and denied all the averments made by the petitioner.

6. The learned Government Advocate appearing for the respondents contended that by G.O.Ms.No.115, Health and Family Welfare D3 Department dated 01.04.2008, pending disciplinary proceedings alone were dropped and punishment already imposed were not set aside. The petitioner was not included in the panel for promotion as the punishment imposed on her was in force. The punishment imposed on the petitioner came to end only on 31.03.2009 and thereafter the petitioner was promoted as Civil Surgeon on 26.03.2010. The Review Petition filed by the petitioner against the order imposing punishment on her to the Government was rejected by G.O.Ms.No.351, Health and Family Welfare (K1) Department, dated 05.03.2018 and prayed for dismissal of the Writ Petition.

7.The petitioner is seeking to quash the G.O.(D) No.728, Health and Family Welfare Department dated 19.09.2005, imposing punishment on her and for a direction to the respondents to grant notional promotion retrospectively on the date on which her junior was promoted as Civil Surgeon and grant all consequential retiral benefits, attendant benefits and other pensionary benefits. The ground on which the petitioner is seeking to quash the punishment is based on the G.O.Ms.No.115, Health and Family Welfare Department dated 01.04.2008, issued by the Government whereby all the disciplinary proceedings pending against the Medical Officers in respect of irregularities committed in conducting Family Welfare Operation during the period 1985 to 1989. Even before the said Government Order was issued, the disciplinary proceeding initiated against the petitioner was concluded and punishment of stoppage of increment for 3 years was imposed on the petitioner. The Government has taken policy decision to drop all the disciplinary proceedings against similarly placed Medical Officers and other Government Officials on the ground that they are not responsible for the alleged irregularity. When the Medical Officers are not responsible for the irregularity, the petitioner cannot be denied being considered for promotion on the ground that disciplinary proceeding was pending and punishment imposed was in force. The learned Government Advocate appearing for the respondents contended that the petitioner filed Review Petition on 16.09.2008 to the first respondent to set aside the punishment imposed on the petitioner and the same was rejected by G.O.Ms.No.351, Health and Family Welfare (K1) Department, dated 05.03.2018, on the ground that it is time barred. The first respondent has taken 10 years to reject the Review filed by the petitioner, challenging the punishment imposed and that too on technical ground. A reading of the G.O.Ms.No.115, Health and Family Welfare Department dated 01.04.2008, shows that Medical Officers and Government Officers were not responsible for the irregularities in conducting the Medical Camp and ordered all the pending disciplinary proceedings to be dropped. When such is the policy decision of the Government, the petitioner is entitled to the said benefit as it has been held that Medical Officers are not responsible for the irregularities. When the petitioner as Medical Officer is not responsible for the irregularity, she cannot be penalised for any alleged irregularity committed by other persons.

8.Considering all the materials available on record and the Government Order in G.O.Ms.No.115, Health and Family Welfare Department dated 01.04.2008, the punishment imposed on the petitioner in G.O.(D) No.728 HEALTH AND FAMILY WELFARE (K-1) DEPARTMENT, dated 19.09.2005 is quashed. The respondents are directed to grant notional promotion to the petitioner retrospectively on the date on which her junior was promoted as

Civil Surgeon and grant all consequential retiral benefits, attendant benefits and other pensionary benefits.

9.In the result, the Writ Petition is allowed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

krk
To

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

2.Director of Medical and Rural Health Services,
Chennai - 600 006.

+2 Ccs to Mr.A. Edwin Prabakar, Advocate sr 69314.
+1 CC to The Govt. Pleader sr 69709.

W.P.No.20948 of 2010

RK(CO)
SP(21/09/2019)

सत्यमेव जयते

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