

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-03-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3477 of 2019

Dr.Silamban

.. Petitioner

vs

1.Government of Tamil Nadu,
Represented by its Principal,
Secretary, Health and Family Welfare Department,
Secretariat,
Chennai-600 009.

2.The Dean,
Madras Medical College,
Park Town,
Chennai-600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second respondent to consider the Letter of Resignation, dated 20.12.2010 and pass orders immediately relieving the petitioner from the services of the Government of Tamil Nadu with effect from 20.12.2010.

For Petitioner : Mr.N.R.Chandran, Senior Counsel for
Mr.Rajnish Pathiyil.

For Respondent-1: Mrs.Narmadha Sampath,
Additional Advocate General
Assisted by Mr.R.S.Selvam,
Government Advocate.

For Respondent-2: Mr.V.Kathirvel,
Special Government Pleader.

O R D E R

The relief sought for in the present writ petition is for a direction to direct the second respondent to consider the letter of resignation dated 20.12.2010 and pass orders immediately relieving the writ petitioner from the services of the Government of Tamil Nadu with effect from 20.12.2010.

2. The writ petitioner joined the Tamil Nadu Medical Services during the year 1993 and was served as Tutor in the Department of Anesthesiology at General Hospital, Chennai till the year 2010. The writ petitioner states that his mother, who was aged 64 years old as of the year 2010, was suffering from Kyphoscoliosis, Parkinson disease and Osteoporosis and his father Dr.T.Ramamurthi M.D. D.C.H. (Pediatrician), aged about 71 years, during the relevant period, was also suffering from age related diseases. The writ petitioner states that he had to look after his aged parents and he could not able to attend the public duty regularly. The writ petitioner was also suffering from chronic back pain and was not able to render his services.

3. Under these circumstances, the writ petitioner submitted the letter of resignation on 20.12.2010, requesting the second respondent to relieve him from the services of the Government of Tamil Nadu. The writ petitioner had not received any information and no orders had been passed during the relevant point of time. Under these circumstance, the writ petitioner received the letter dated 25.12.2011 from the second respondent, seeking explanations from the writ petitioner for not having passed the prescribed examination and for the unauthorised absence from duty with effect from 1.3.2011 onwards. The writ petitioner states in his affidavit that he was under the impression that his resignation letter was accepted by the second respondent and he had been relieved from service with immediate effect.

4. Pursuant to the notice issued by the second respondent, the Regional Passport Officer, Chennai had issued the letter dated 7.2.2012 to the writ petitioner asking him to explain why his passport should not be impounded. The writ petitioner appeared before the Regional Passport Officer, Chennai and submitted his explanation and pleaded that his passport should not be impounded by accepting his explanation. However, the passport of the writ petitioner was returned to the Regional Passport Officer for verification. Under these circumstances, the writ petitioner is constrained to move the present writ petition.

5. The learned Senior Counsel, appearing on behalf of the writ petitioner, mainly contended that the writ petitioner submitted his letter of resignation on 20.12.2010 and the second respondent had not taken any decision nor passed any orders. Thus, for all purposes, the writ petitioner was deemed to be relieved from service and the resignation letter submitted by him also was deemed to be accepted by the second respondent. Thus, the direction is to be issued, directing the second respondent to pass an order in this regard.

6. The learned Senior Counsel, appearing on behalf of the writ petitioner, further contended that an employee has got the right of resignation and therefore, such a right cannot be denied nor the second respondent can keep the letter of resignation pending for years together. Even in the case of unauthorised absence as alleged against the writ petitioner, the respondents have not initiated any disciplinary proceedings or taken any disciplinary actions or otherwise against the writ petitioner so far. Under these circumstances, the second respondent must be directed to consider the letter of resignation submitted by the writ petitioner on 20.12.2010 and pass orders relieving him from service retrospectively with effect from 20.12.2010.

7. The learned Additional Advocate General, appearing on behalf of the first respondent, disputed the contentions raised on behalf of the writ petitioner, by stating that the very sanctity of the letter of resignation submitted by the writ petitioner to the second respondent on 20.12.2010 itself is not genuine. The said letter dated 20.12.2010 had not been received by the second respondent at all. It is contended that the writ petitioner had applied for medical leave and subsequently abstained from coming to the Hospital and he was on unauthorised absence.

8. The writ petitioner joined the Medical Services through Tamil Nadu Public Service Commission on the Forenoon of 23.6.1993. Subsequently, he had selected for Diploma in Anesthesiology as Service Post Graduate and joined the Course on 28.6.1995 in Madurai Medical College, Madurai and thereafter reallocated to Madras Medical College, Chennai and joined the Course on 5.7.1995 and completed the Post Graduate Diploma in Anesthesiology and the writ petitioner was relieved on 25.3.1997 and he was awarded stipend for his study period. The writ petitioner had worked as Tutor in Anesthesiology with effect from 1.8.1997. Later, the writ petitioner went on unauthorised absence from 1.3.2011. As per the procedure, three call notices were issued and Immigration Department was asked to inform whether the writ petitioner left out the country. Since the Government had invested the public money for his Speciality in Anesthesiology for acquiring the Post Graduate Diploma Course as Service Post Graduate with the main intention to serve the public.

9. Necessary instructions have been given to the writ petitioner in writing for rejoining duty in the second respondent's office vide letter dated 13.5.2011. But the writ petitioner has not obeyed the instructions of the Head of Office (second respondent) i.e., Dean and not joined duty till date.

10. It is stated in paragraph 8 of the counter-affidavit that the letter dated 20.12.2010, seeking resignation, which is said to have been sent to the office of the second respondent, has not been received by the second respondent. The writ petitioner has now submitted his letter dated 17.12.2018, which has been forwarded to the Director of Medical Education, Chennai vide letter dated 6.2.2019. The writ petitioner himself submitted that he visited the foreign Nation i.e., Colombo during the year 2011 without obtaining permission from the Government and thereby the eventuality of impounding his passport No.J4041137 aroused. The resignation letter sent by the writ petitioner on 20.12.2010 had not been received by the second respondent. The second resignation letter dated 17.12.2018 was forwarded to the Director of Medical Education, Chennai vide letter dated 6.2.2019.

11. The learned Additional Advocate General, appearing on behalf of the first respondent, further contended that the writ petitioner has committed an act of misconduct by remaining unauthorisedly absenting himself from duty in attending the public duty. This apart, as per the Medical Council of India Notification, the writ petitioner has committed the misconduct by not performing his duties of Physician to the public and to the Para Medical profession, he was unauthorisedly absenting from duty for the past 7-1/2 years and he has resumed his private practice by undergoing the Specialist Course from and out of the taxpayers' money and now refusing to serve the public at large.

12. Therefore, the very act of the writ petitioner is the misconduct. Even as per the Medical Council of India, the respondents reserve their right to file a complaint against the writ petitioner before the Medical Council of India for initiating appropriate action under the Medical Council of India Regulations. The Code of Medical Ethics require that a Doctor, who had given an undertaking and studied P.G. Diploma Course, which is a Speciality Course from and out of the public money, is bound to serve the public. The writ petitioner has not only neglected the public duty but also remained unauthorisedly absenting himself from duty without even sending any letter to the respondents. The resignation letter of the writ petitioner, said to have been sent to the second respondent on 20.12.2010, had not been received by the second respondent at all.

13. Considering the arguments as advanced by the respective parties to the lis on hand, this Court is of an opinion that the resignation letter dated 20.12.2010 is enclosed in page No.7 of the typed set of papers filed along with the writ petition. The letter, which is enclosed in page No.7 of the

typed set of papers, did not contain any seal of the office of the second respondent nor any acknowledgment from the Postal Department or from any other authorities. It is a blanket letter enclosed in the typed set of papers. In page No.8 of the typed set of papers, the order dated 25.12.2011 passed by the Dean is enclosed by the writ petitioner. The said letter was sent to the writ petitioner through a Special Messenger. The said letter says that "Dr.R.Silamban is therefore, directed to report to the Director of Medical Education, Chennai-10 immediately without fail and to furnish immediately as to whether he has passed the departmental test in Tamil Nadu Medical Code and Account Test for Executive Officer. He is also instructed to submit his explanation for his unauthorised absence for duty from 1.3.2011 to till date and disobeyel of the orders of the higher authority, which is in violation of Government Servants Conduct Rules, within 10 days on receipt of this memo. Failing which necessary disciplinary action will be initiated against him on the merits of this case of dereliction and undevotion to duty, without any further notice". The writ petitioner has not even responded by stating that he had already submitted the resignation letter on 20.12.2010. In the absence of any such spontaneous reply, the resignation letter dated 20.12.2010 cannot be trusted upon.

14. Contrarily, the writ petitioner continued to be in unauthorised absence with effect from 1.3.2011 onwards. Only when the passport of the writ petitioner was returned to the Regional Passport Officer, the writ petitioner started initiating action for pursuing the issue. In the absence of any proof to establish that the writ petitioner had submitted the letter of resignation on 20.12.2010, this Court cannot trust upon the letter of resignation enclosed in page No.7 of the typed set of papers filed along with the writ petition. The said resignation letter dated 20.12.2010 is neither supported with any acknowledgments nor the said letter is referred to by the respondents in any other proceedings.

15. Under these circumstances, the very sanctity cannot be trusted upon. It is the bounden duty of the writ petitioner to establish that the letter of resignation had reached the office of the second respondent on 20.12.2010. In the absence of any such proof, this Court cannot now consider the relief based on the letter of resignation dated 20.12.2010. Thus, firstly, the very relief sought for in the present writ petition raised upon the said letter of resignation dated 20.12.2010, which is of doubtful nature. Secondly, the writ petitioner is still remaining in unauthorised absence right from the year 2011 onwards. Thus, the very conduct of the writ petitioner is to be deprecated.

16. The writ petitioner is in Medical Services. The writ petitioner is the medical practitioner and registered his name in the Medical Council of India is bound by the Regulations of the Medical Council of India as well as the Tamil Nadu Government Servants Conduct Rules and also the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The writ petitioner, being a responsible medical practitioner, has not even cared to respond to the notices sent by the Competent Authority.

17. The recent trend in the Medical Profession is that the Doctors, on registration of their names in the Medical Council of India, are simultaneously aspiring to secure public employments through Tamil Nadu Public Service Commission or otherwise. Thus, the Doctors, at their young age, are gaining experience from the Government Medical Colleges, Government Hospitals or any Government Headquarters Hospitals and after gaining experience and after exploiting all the Government resources at free of cost for acquiring their Speciality qualifications and practical experiences, they are leaving their job for their personal enrichment.

18. Undoubtedly, the freedom of profession is the fundamental right. However, the fundamental rights are subject to certain restrictions. The Doctors, who acquired the Speciality Degrees and qualifications, at the cost of the public and by providing certain undertakings, are bound to serve for the public. However, Medical Profession, being commercialised, day by day, the Doctors are also neglecting their professional nobility and the responsibility to provide quality medical treatment to the citizens of our Great Nation. Medical Profession is now commercialised to the larger extent, and privatisation is inevitable. This Court is also of an opinion that no one is questioning the decision of a Doctor to develop their private practice. However, the Doctors have to take a decision before entering into the public services and before undergoing the Speciality Courses at the cost of the taxpayers' money. When the Doctors had undergone the Speciality Courses or PG Courses, at the cost of the taxpayers' money and by providing an undertaking and after gaining experience from the Government Hospitals, they are bound to serve for the public and they have to show devotion to their duty as Medical Professionals.

19. Contrarily, if those Doctors are allowed to escape from the performance of their public duty, then this Court is of an undoubted opinion that, we are not adhering to the constitutional principles and ethos. These Doctors must be made to work in the public hospitals in view of the fact that they had not only given undertaking at the time of undergoing the Speciality Courses and P.G. Courses, at the cost of the public money and gained experience from the Government Hospitals.

20. It may be little harsh in stating the reality that few Doctors, who all are in the habit of neglecting their public duty towards the public at large, had gained their experiences from the poor man's body in Government Hospitals and undoubtedly, they gained experience by dissecting those poor man's body, who have no option but to take treatment in Government Hospitals at free of cost. After gaining vast experiences from those poor man bodies or by providing treatment by utilising the infrastructure facilities provided by the Government in Government Medical Colleges and Hospitals. These Doctors are enriching themselves by treating the rich by charging exorbitantly. It is not possible for a common poor man or the middle income group families to get treatment from reputed Corporate Hospitals. However, the Doctors on gaining experience from utilising the resources provided by the Government and by learning the medical intricacies and diagnosis from and out of the poor man's body and thus, they are making money for their personal enrichment. Such conduct of the Doctors, who all performing the noble duties are to be deprecated and the said situation is to be construed as violation of the Medical Council of India Regulations.

21. Article 38 of the Constitution of India, while enumerating the Directive Principles of State Policy stipulates that "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life". Article 39(e) denotes that "the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength".

22. Thus, the Constitutional Courts have now ruled that protection of life enshrined under Article 21 of the Constitution of India covers the medical facilities to be provided by the State to all the citizen of this Great Nation. No person shall be deprived of his life, includes providing of a decent medical facilities to all the citizen. Undoubtedly, the State Machinery, more specifically, the Health Department is providing large scale infrastructural facilities in Government Medical Colleges and Hospitals and those medical equipments and other infrastructural facilities are used by the Doctors for the purpose of gaining rich experiences in the medical field and as well as provides ample opportunity to develop the skill of diagnosis.

23. Thus the skill acquired from and out of the taxpayers' money must be utilised for the welfare of the people

at large and under these circumstances, the Government expect that those Doctors are liable to work at least for the periods specified or as per the terms and conditions of the appointment by providing quality treatments to all the people equally, who all are coming for treatment in Government Hospitals. Such an idea can never be thwarted on account of the fact that these Doctors are abandoning their duties and responsibilities by leaving the premises either by unauthorised absence or by way of submitting the resignation letters or voluntary retirements.

24. Considering all these circumstances, the Government amended the Rule and in the new Enactment, namely, Tamil Nadu Government Servants Service Conditions Act, the acceptance of resignation letter is the discretion of the Government to be exercised based on the facts and circumstances of each case.

25. The duties and responsibilities of the Physician in general is notified under Chapter 1 Code of Medical Ethics published in Part III, Section 4 of the Gazette of India dated 6.4.2002. In exercise of powers conferred under Section 20-A read with Section 33(m) of the Indian Medical Council Act, 1956, the character of Physician is enumerated as under:-

"1.1.1 A Physician shall uphold the dignity and honour of his profession.

1.1.2 The prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Whosoever chooses his profession, assumes the obligation to conduct himself in accordance with its ideals. A Physician should be an upright man, instructed in the art of healings. He shall keep himself pure in character and be diligent in caring for the sick; he should be modest, sober, patient, prompt in discharging his duty without anxiety; conducting himself with propriety in his profession and in all the actions of his life".

26. Chapter 5 denotes the duties of Physician to the public and to the Paramedical Profession. Chapter 5.1 deals with Physicians as Citizens, which reads as under:-

"5.1 Physicians as Citizens:

Physicians, as good citizens, possessed of special training should disseminate advice on public health issues. They should play their part in enforcing the laws of the community and in sustaining the institutions that advance the interests of humanity. They

should particularly cooperate with the authorities in the administration of sanitary/public health laws and regulations."

27. Chapter 6 deals with unethical acts. A Physician shall not aid or abet or commit any of the following acts which shall be construed as unethical.

28. Section 50 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 provides acceptance of resignation, which reads as under:-

"50. Acceptance of Resignation.--. (1) A Government servant may resign his appointment by giving notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer. The period of three months notice shall be reckoned from the date of receipt of such notice by the appointing authority.

(2) The Government servant may withdraw the notice of his resignation before its acceptance and withdrawal of resignation shall not be permitted after its acceptance by the appointing authority.

(3) The appointing authority shall issue orders on the notice of resignation before the date of expiry of notice, either accepting the resignation from a date not later than the date of expiry of the notice or rejecting the same, giving the reasons therefor. If no such order is passed, the resignation shall be deemed to have been accepted on the expiry of the period of notice.

(4) Notice of resignation given by the Government servant shall be accepted by the appointing authority, subject to the conditions-

(i) that no disciplinary proceeding is contemplated or pending against the Government servant concerned under sub-rule (b) of rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules;

(ii) that a report from the Director of Vigilance and Anti-Corruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned;

(iii) that no dues are pending to be recovered by the Government from the Government servant concerned; and

(iv) that there is no contractual obligation of any kind including contractual obligation to serve the Government during the period in which the Government servant concerned seeks to resign.

(5) Notwithstanding anything contained in clauses (i) and (ii) of sub-section (4), where a Government servant, under suspension or against whom disciplinary or criminal action or vigilance enquiry is pending, seeks to resign, the appointing authority shall examine the nature and gravity of the case and may accept the resignation, if the case is not such as would warrant rejection of the notice of resignation."

29. Undoubtedly, a Government Servant may resign his post by giving a notice of not less than three months in writing to the appointing authority. In the present case on hand, the very submission of the resignation letter itself is not established by the writ petitioner with reference to the resignation letter dated 20.12.2010. The subsequent letter sent by the writ petitioner on 17.12.2018 alone is acknowledged by the respondents. The sub-clause (3) of Section 50 enumerates that "the appointing authority shall issue orders on the notice of resignation before the date of expiry of notice, either accepting the resignation from a date not later than the date of expiry of the notice or rejecting the same, giving the reasons therefor".

30. Thus, the provisions of the Act is very clear that acceptance of resignation by the competent authority is not an automatic one. The discretion is vested with the competent authority either to accept the resignation or to reject the same.

31. In the present case on hand, the writ petitioner himself has not established that he has submitted the resignation letter dated 20.12.2010 and the respondents had clearly stated that they had not received any such resignation letter from the writ petitioner. The writ petitioner has not pursued the resignation for a long period of time. Under these circumstances, the letter of resignation dated 20.12.2010, cannot be trusted upon and therefore, no consideration can be shown with reference to the resignation letter of the writ petitioner dated 20.12.2010. The subsequent letter dated 17.12.2018 dealt with by the respondents and the same was not

considered and thereafter, the writ petition is filed.

32. The statutory provision in relation to the acceptance of resignation stated in the earlier paragraph is unambiguous that the acceptance of resignation can never be claimed as a matter of legal right by the Government employees. The Government is empowered under the provisions of the Act, either to accept the resignation or to reject the same based on certain facts, circumstances or on administrative grounds. The Statute provides such a discretion visualising the current day situations and to ensure that the persons, who had undergone the Speciality Courses and gained experience by utilising the public resources and infrastructural facilities must serve to the public as per the terms and conditions stipulated.

33. In other words, to prevent exploitation of public resources and the opportunities provided for gaining experiences can never be allowed. The prevailing practice as of now from amongst few Doctors are that after gaining experience by utilising the public resources and infrastructural facilities, abandoning the public employments by simultaneously developing their private practice just for their personal enrichment.

34. Undoubtedly, every Doctor is to be ambitious both regarding the development of practice as well as regarding the monetary considerations. A balance approach is to be adopted by the Doctors since they are performing the noble duties. Everyone is aware that economic resources are also important for the medical professionalists. However, such medical resources cannot be created by compromising the public duties and the constitutional perspectives. Without having a balanced approach, few Doctors are abandoning their job either by way of unauthorised absence or by submitting resignation or voluntary retirement applications and those circumstances are contrary to the provisions of the Service Conditions Act as well as certain conducts are denoted as "misconduct" under the Medical Council of India Regulations. सत्यमेव जयते

35. The Hon'ble Supreme Court of India The State Of Uttar Pradesh vs Achal Singh [decided in Civil Appeal No.8421 of 2018 dated 21.8.2018], in paragraphs 34, 35, 36 and 40, held as follows:-

"34. The concept of public interest can also be invoked by the Government when voluntary retirement sought by an employee, would be against the public interest. The provisions cannot be said to be violative of any of the rights. There is already paucity of the doctors as observed by the High Court, the system cannot be left without

competent senior persons and particularly, the High Court has itself observed that doctors are not being attracted to join services and there is an existing scarcity of the doctors. Poorest of the poor obtain treatment at the Government hospitals. They cannot be put at the peril, even when certain doctors are posted against the administrative posts. It is not that they have been posted against their seniority or to the other cadre. Somebody has to man these administrative posts also, which are absolutely necessary to run the medical services which are part and parcel of the right to life itself. In the instant case, where the right of the public are involved in obtaining treatment, the State Government has taken a decision as per Explanations to decline the prayer for voluntary retirement considering the public interest. It cannot be said that State has committed any illegality or its decision suffers from any vice of arbitrariness.

I 35. The decision of the Government cater to the needs of the human life and carry the objectives of public interest. The respondents are claiming the right to retire under Part III of the Constitution such right cannot be supreme than right to life. It has to be interpreted along with the rights of the State Government in Part IV of the Constitution as it is obligatory upon the State Government to make an endeavour under Article 47 to look after the provisions for health and nutrition. The fundamental duties itself are enshrined under Article 51(A) which require observance. The right under Article 19(1)(g) is subject to the interest of the general public and once service has been joined, the right can only be exercised as per rules and not otherwise. Such conditions of service made in public interest cannot be said to be illegal or arbitrary or taking away the right of liberty. The provisions of the rule in question cannot be said to be against the Constitutional provisions. In case of voluntary retirement, gratuity, pensions, and other dues etc. are payable to the employee in accordance with rules and when

there is a requirement of the services of an employee, the appointing authority may exercise its right not to accept the prayer for voluntary retirement. In case all the doctors are permitted to retire, in that situation, there would be a chaos and no doctor would be left in the Government hospitals, which would be against the concept of the welfare state and injurious to public interest. In the case of voluntary retirement, there is a provision in Rule 56 that a Government servant may be extended benefit of an additional period of five years then an actual period of service rendered by him there is the corresponding obligation to serve in dire need.

36. It was urged that in the State of Tamil Nadu, Government has amended the rules not to retire Government doctors, if there is any scarcity of doctors it is open to the Government of Uttar Pradesh to amend its rules. In India, the Government sponsored Medical Services to cater to the needs of poorest of the poor and havenots otherwise there is the commercialisation of the charitable medical profession. In other States too, it is seen sometime that when a doctor is transferred from one place to another, the doctor forwards application resigning from the post or seeks voluntary retirement as he does not want to move out and leave his lucrative private practice and joins the duty only when he obtains posting back to the place of his choice. In such a scenario people cannot be deprived of the services of good doctors. In view of the scarcity of the doctors and the unfortunate privatisation and commercialisation of the noble medical profession, for maintaining the efficiency of the State Medical Services, the decision taken by the Government is permissible as per rules and cannot be interfered with. Unfortunately, the High Court has given the aforesaid observations pointing out the shortage of specialised doctors and at the same time has ultimately decided against the State Government on wrong interpretation without considering the Explanation attached to Rule 56 applicable in the State of Uttar Pradesh.

The preface given by the High Court is just opposite to its conclusion. The High Court ought to have rejected and not to allow the prayer of voluntary retirement made by the doctors.

40. There are several decisions of the High Court, namely, Dr. Anil Dewan vs. State of Punjab, ILR 1 Punjab & Haryana 46; State of Punjab vs. Dr. Harbir Singh Dhillon, 2010 SCC Online P&H 6159 and Dr. Kalpana Singh vs. State of Rajasthan, (2014) SCC Online Raj 6253, were cited to show that the decision in Dinesh Chandra Sangma (supra) had been followed. We have considered the aforesaid decisions and we find that it would depend upon the scheme of the Rules. Each and every judgment has to be considered in the light of the provisions which came up for consideration and question it has decided, language employed in the rules, and it cannot be said to be of general application as already observed by this Court in State of Haryana (supra)."

36. As discussed in the above mentioned paragraphs, right to life includes providing of decent medical facilities to all the citizen of this Great Nation and it is the duty of the State to ensure such medical treatments and facilities are provided at par and equally, since the Government Hospitals are equipped with advanced medical equipments and infrastructures. Mostly utilisation of these medical equipments and infrastructural facilities are not regulated. The Machineries are not maintained properly as per the instructions provided by the manufacturers of such medical equipments. Sometimes, those medical equipments are misused by the medical practitioners and employees of the Hospitals by mishandling or not operating as per the instructions.

37. Adequate care has not been taken to maintain the medical equipments and infrastructural facilities provided at the cost of the taxpayers' money. Every Doctor and the employees in the Medical Department must ensure that those infrastructural facilities and medical equipments are maintained and in the event of any damage or otherwise, the authorities competent must be vigilant and initiate appropriate actions to make good the loss caused to the State Exchequer.

38. The attitudinal sense of these employees and

Doctors required a drastic change in providing decent treatment to the common man in Government General Hospitals. The fact remains that adequate care has not been taken by the medical practitioners and para medical staff, while attending the patients in Government Hospitals. Frequent complaints of medical negligence and lapses and dereliction of duty of the employees are noticed.

39. Decent medical treatment is an integral part of Article 21 of the Constitution of India, fundamental right of the citizen of our Great Nation. Lapses in this regard are to be viewed seriously. Compromise on health issues of the common man can never be tolerated.

40. Let us now examine the prevailing situation and conditions of Government Medical Hospitals across the State of Tamil Nadu. Huge public money are being invested for developing infrastructures and for purchase of advanced medical equipments from companies within India as well as from abroad. Question arises whether those advanced equipments are maintained and utilised for the benefit of the patients. There is no adequate supervising and controlling mechanism in vogue and thus, the public money is being wasted.

41. The Government Doctors are gaining rich experiences at the cost of public money and even through public themselves, who all are attending Government Hospitals. Poor men are being used as 'Guinea Pig' for learning. Poor man's dead body is dissected and provided for learning. The Government resources and the life of poor men are under the mercy of these Government Doctors. If no adequate measures are taken to monitor the quality of treatment and performances are undertaken, the State is failing in its duty to uphold the right to life ensured to the citizen under Article 21 of the Constitution of India.

42. Apart from the corrupt practices in the Government Hospitals, it is painful to pen down that the Doctors themselves are irregular in attending duty, resulting death of patients, who all are not in a position to afford quality treatment from Corporate Hospitals. The situation results denial of social justice and equal treatment. Economic condition of a citizen cannot be a ground for denial of quality treatment. Thus, the Government is duty bound to ensure cleanliness, availability of Doctors including speciality treatment, paramedical staff, supporting staff, which all are imminent and a Constitutional mandate.

43. Frequent complaints are noticed across the State that the Government Doctors are developing their private practice by neglecting the public duty. It is a misconduct both

under the Government Service Rules as well as under the Medical Council of India Regulations. Thus, adequate steps are highly warranted. It is worthy to remind the words of St. Mother Therasa

"Do things for people not because of who they are or what they do in return, but because of who you are".

"We ourselves feel that what we are doing is just a drop in the ocean. But if that drop were not there, I think the ocean would be less by that missing drop."

44. In view of the Constitutional importance and the decent medical facility, which is ensured under Article 21 of the Constitution of India, this Court is inclined to pass the following orders:-

(a) The relief, as such, sought for in the writ petition on hand stands rejected.

(b) The respondents are directed to initiate all appropriate actions against the writ petitioner under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

(c) The respondents are directed to lodge a complaint with the Medical Council of India regarding the misconduct enabling the Medical Council of India to institute appropriate proceedings under the Statute and the Regulations.

(d) The first respondent is directed to constitute a 'Monitoring Committee' to supervise the attendance and assess the performance of Government Doctors as well as regarding the maintenance of Government Medical Hospitals as per the prescribed standards.

(e) The respondents are directed to recover adequate compensation from the Government Doctors, who all are violating the terms and conditions of their services with reference to the expenditures met out from the public money for acquiring P.G. Degrees, Speciality Degrees etc.

45. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Svn

To

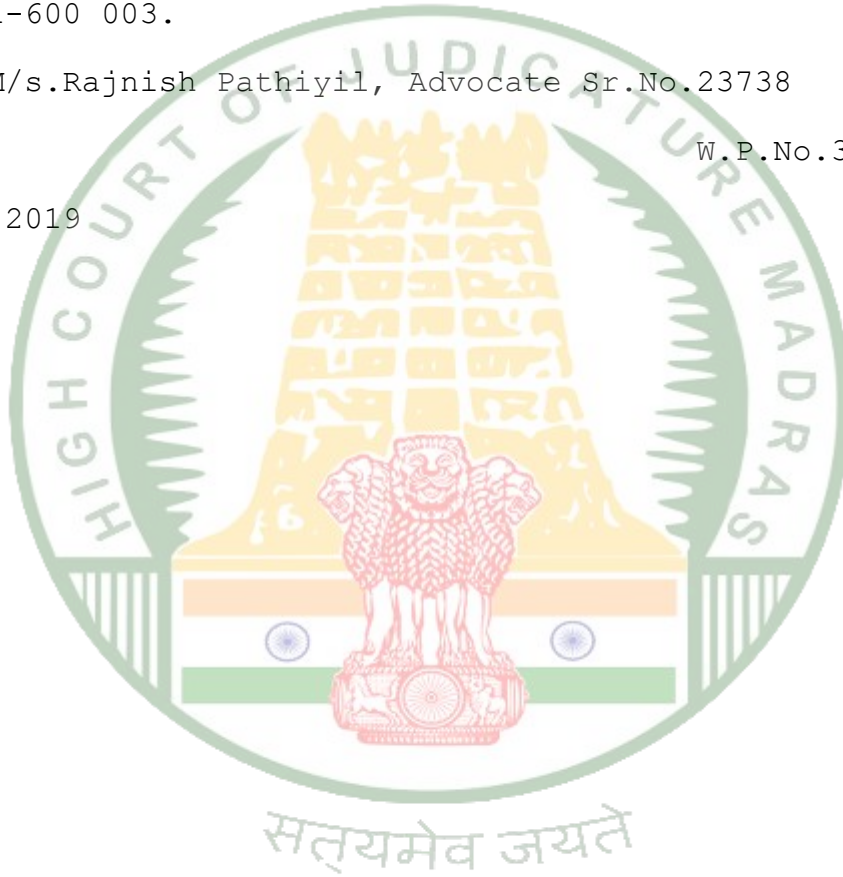
1.The Principal Secretary,
Government of Tamil Nadu,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.

2.The Dean,
Madras Medical College,
Park Town,
Chennai-600 003.

+1 cc to M/s.Rajnish Pathiyil, Advocate Sr.No.23738

W.P.No.3477 of 2019

SJ(CO)
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