

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.11.2018

Pronounced on : 07.06.2019

CORAM:

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.20313 of 2013

R.Anusuya

.... Petitioner

Vs

1. The Dean,
Government General Hospital,
Chennai - 3.
2. The Director of Medical Education,
Kilpauk, Chennai -10.
3. The Secretary to Government,
Health & Family Welfare (I-1) Department,
Fort St.George, Chennai - 9.
4. The Director & Professor,
Institute of Forensic Medicine,
Madras Medical College, Chennai - 3.

Prayer:

Writ Petitions has been filed Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the respondents 2 & 3 in connection with the impugned orders passed in Ref.No.26091/SCII/1/2006 dated 25.09.2006 and GO (D) No.415 Health & Family Welfare

Department dated 03.05.2013 and quash the same and further

direct the respondents to superannuate the petitioner from service and grant her all consequential service and monetary benefits.

For Petitioner : Mr.Venkataramani,
Sr.Counsel for
Mr.M.Muthappan

For Respondents 1-3 : Mr.B.Anand,
Government Advocate

ORDER

The challenge in this writ petition is to the order dated 03.05.2013, passed by the respondent No.3 in GO (D) No.415 Health & Family Welfare Department, dismissing the appeal of the petitioner which approved the punishment of removal from service awarded by the disciplinary authority.

2. The petitioner was appointed as a staff nurse in the Government General Hospital, Chennai. She applied for medical leave from 16.11.1994. She did not join back duty. It is stated that, she submitted leave letters on 15.11.1994, 12.04.1995, 14.08.1995, 04.11.1995, 12.02.1996 and 16.05.1996, but there is nothing to show that the said leave letters were accepted by the Government.

3. A charge memo issued on her on 11.01.1999 by the Dean, Government General Hospital under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The following charges are framed against the petitioner:-

"Charge No.1: That Tmt. R.Anusuya, Nurse, Government General Hospital, Chennai.3 has been on unauthorised absence from duty with effect from 16.11.94 to date. She has thereby exhibited lack of devotion to duty and conduct unbecoming of a Government Servant.

Charge No.2: That she was directed to rejoin duty within a oven days in this office memo.dt.2l.3.95, but she did not rejoin duty as directed, she has thus wilfully disobeyed the orders of her superiors and thereby exhibited lack of devotion to duty and conduct unbecoming of a Government.

Charge No.3: That she failed to make arrangements to receive the communication sent to her from this office. This office memo.No.26913/E11/2/94 dt.26.2.96 sent to her to the address at Nagai-Quido Miloth District was returned undelivered by the postal authorities. but she did not keep this office informed of the changes if any in her address. She has thus exhibited conduct unbecoming of a Government servant.

Charge No.4: That she obtained the passport No.K.369459 dt.3.12.91 without obtaining "No Objection Certificate" from the competent authority. Thus she has violated rule 24A of the Tamil Nadu Government Servant Conduct Rules 1973.

Charge no.5: That she has been on unauthorized absence continuously for more than one year with effect from 16.11.94 to date and thus she has violated the provisions contained in

F.R.18."

4. Enquiry Officer officer was appointed. The petitioner did not appear in the enquiry proceedings. The Enquiry Officer by an order dated 28.05.2003 found that, all the charges have been proved. The Enquiry Officer in his report stated that, despite number of letters being sent to her residential address, the petitioner did not participated in the enquiry. It is also stated in the report that, all the letters were returned with information "Always not found". The Enquiry Officer also found that the last summons was received by her son on 21.10.1999 and despite that, the petitioner did not appear in the enquiry. The Enquiry Officer held that all the charges have been proved since the petitioner did not appear in the enquiry proceeding and she did not gave any explanation.

5. The petitioner filed an appeal before the Director of Medical Education, Chennai. The Appellate Authority by its order dated 28.05.2003, accepted the findings of the Enquiry Officer and dismissed the appeal. This order was challenged in WP.No.27797 of 2005 in this Court. This Court by an order dated 30.02.2006, set aside the enquiry officer's report, on the ground that the petitioner had not been served properly.

6. The authorities were directed to issue a fresh charge memo to the petitioner, to give her explanation and if the same is not satisfactory to conduct a fresh enquiry and to finalize the departmental proceedings within a period of six months from the date of receipt of a copy of the order. Accordingly, a fresh charge memo was issued. The charges framed against the petitioner reads as under:-

"Charge 1: That Tmt.R.,Anusuyam Nurse, Government General Hospital, Chennai has been unauthorized absence from duty with effect from 16.11.1994 to date. She has thereby exhibited lack of devotion to duty and conduct unbecoming of a Government servant.

Charge 2: That she was directed to rejoin duty within seven days in this office memo dated 21.03.1995, but did not rejoin as directed. She has thus willfully disobeyed the orders of the superiors and hereby exhibited lack of devotion to duty and conduct unbecoming of a government servant.

*Charge 3: That she failed to make arrangements to receive the communication sent to her from this office. This office memo No.26913/EII(2)*94, dated 26.02.1996 sent to her to the address at Nagai Quide Millath District was returned undelivered by the postal authorities. But she did not keep this office informed of the changes if any in her address. She has thus exhibited conduct unbecoming of the Government servant.*

Charge 4: That she obtained the passport no.369459 dated 03.12.1991 without obtaining No, objection certificate from the competent authority. Thus she has violated Rule 24-A of the Tamil Nadu Government Servant Conduct Rules 1973.

Charge 5: That she has been on unauthorized absence

continuously for more than one year with effect from 16.11.1994 to date and thus she has violated the provisions contained in F.R.18."

7. A new Enquiry Officer Dr.Vallinayaggam, MD., Director and Professor, Institute of Forensic Medicine, Madras Medical College, Chennai, was appointed. The Enquiry Officer gave his report on 29.07.2006. The Enquiry Officer found that the charge memo was acknowledged by the petitioner. It was also recorded that the petitioner submitted her explanation for the charges leveled against her. It is recorded that the departmental proceedings were initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. It is recorded by the petitioner in her defense stated that, her mother-in-law was sick and due to unavoidable family issues, she was not able to attend the enquiry proceedings.

8. The Enquiry Officer framed the following points for determination.

"Points for determination

- 1. Whether Tmt.R.Anusuya, formerly Nurse had absented from duty with effect from 16.11.1994, unauthorisedly.*
- 2. Whether she had disobeyed the orders of her superiors.*
- 3. Whether her unauthorised absence has caused hindrance to the routine work of the hospital*
- 4. Whether she obtained passport without obtaining prior*

permission/NOC from this office?"

The Enquiry Officer found that, though the petitioner was sending leave applications, there is nothing to show that the leave applications have been accepted by the department. The Enquiry Officer found that the petitioner was aware that she has not got any permission for her leave. The findings of the Enquiry Officer on all the charges read as under:-

"The contention of Tmt. R. Anusuya is not correct because she was not able to produce substantiate evidences to produce at the time of enquiry to prove her statement. Further, she has neither intimated nor obtained permission to move from the Head Quarters Chennai to Tiruvarur, from the Head of the Institution. Hence the Charge stands proved.

Findings for Charge 2: She has stated that die office order dated 21.03.1995 directing her to join duty did not reach her since she was at Tiruvarur and that the memo was sent to Chennai address. The memo was sent to only alter 4 months and 5 days to her Chennai address, fill then she has not informed the office about her leaving to Tiruvarur. Hence this is utter violation of rules. Hence this charge also stands proved.

Findings for Charge 3: She has stated that she was in confused mind and as such she could not give reply to the office and also give the correct address. Her statement is absolutely not correct and cannot be accepted. She did not keep this office informed of the change of address, for several years am as a result all the memos sent to her were returned undelivered including the last memo dated 26.02.1996. It is the fundamental dutv of a Government Servant to inform the office about the change of address. Since she failed to do the fundamental duty, the charge No. 3 is also proved.

Findings for Charge 4: She has stated during the enquiry that she was not aware of the fact that the N.O.C. should be obtained before getting the Passport. However she has admitted that she has received passport and did not go to abroad. She has further stated that the Passport is lost while shifting the house and that she was not aware: of the fact of informing to higher authorities about taking Passport.

The explanation of the individual is not convincing. She joined service on 18.04.1975 whereas she has obtained the Passport; on 03.12.1991 (i.e) after completing 16 years of service. Being a senior Nurse and working in a responsible position she would have aware of the rules of getting permission from the competent authority before getting passport. Further, she was not able produce the Passport at the time of enquiry to prove her statement that she did not go to abroad. It is her fundamental duty to proved. Hence the charges No.4 also stand proved.

Findings for Charge 5. .She has stated in the enquiry that she has applied for leave up to the year 1996 and admitted that she has not approached any higher authorities to excuse her. Further she added that she did not produce any valid evidences during enquiry since her husband instructed her not to go for duty she acted accordingly. The act of the delinquent officer is against rules. It shows that she acted according to the wish of her husband and this act cannot be justified.

Hence the charge No.5 "that she has been on unauthorised absence continuously for more than one year with effect from 16.11.1994" stands proved."

9. The petitioner filed a representation against the enquiry

<http://www.judis.nic.in> report to the Disciplinary Authority. In the report, the petitioner

stated that she had not been supplied with all the documents. The petitioner stated that in the questionnaire given to her against the column "are you satisfied with the enquiry conducted by the department", she had to write "yes", because there was no other alternative. The petitioner contended that the enquiry has been conducted without any examination of any witnesses on the side of department. She said that the enquiry was an empty formality and has not been conducted in accordance with law.

10. The Disciplinary Authority by an order dated 25.09.2006, held that, the enquiry has been conducted properly. It was also observed by the Disciplinary Authority that the petitioner attended the enquiry proceeding and during the enquiry, she has been given with all the document which was claimed by her in the representation given by her. The Disciplinary Authority therefore decided to impose punishment of removal of service on her.

11. The petitioner thereafter filed an appeal against the order of dismissal from service. The Appellate Authority dismissed the appeal. The only paragraph in the order

http://www.judis.nic.in dismissing the appeal reads as under:-

"6. The Government examined the appeal preferred by Tmt.R.Anusuya carefully and independently with all the connected records along with the views of the Tamil Nadu Public Service Commission. The appellant has not submitted her defence statement to the charges framed against her. Further she has not participated in the enquiry conducted by the Inquiry Office and also not intimated the change of address to the appointing authority. The appellant has not put forth any documentary evidence to support her appeal. The Government have therefore decided to reject the appeal preferred by Tmt.R.Anusuya against the punishment of "removal from service" imposed on her by the Director of Medical Education. The Government, accordingly, do and hereby order that the appeal preferred by Tmt.R.Anusuya, formerly Staff Nurse, Government General Hospital, Chennai, against the punishment of "removal from service" imposed on her by the Director of Medical Education in the proceedings second read above, be rejected as devoid of merits and confirm the punishment already imposed on her."

It is this order which is under challenge in the present writ petition.

12. It is contended that,

i) The charges are vague, non-specific, ambiguous and without any basis. There are no specific dates in the charge memo with reference to the absence from duty of the petitioner. The leave letters sent by the petitioner have not been reflected in the charge memo. The petitioner after receiving the charge memo has submitted a questionnaire wherein she has requested

specifically to examine the witnesses on the side of the

department and sought permission to cross examine the witnesses. The petitioner's explanation and the questionnaire is enclosed herewith.

ii) The report of the enquiry officer shows that there is total non-application of the mind. No witness was examined in the oral enquiry for the charges. The files have not been marked through an officer of the department. The petitioner was not allowed to peruse the file before the same is relied upon for the proof of the charges. The petitioner was examined in oral enquiry and her statement was taken as a proof for the charges which is not permissible. It is contended that the department has to lead evidence first, examine the witnesses, mark the documents and prove the charges and thereafter only, the delinquent officer should be allowed to cross examine the witnesses. The files were not marked and produced only at the time of the oral enquiry. The contents of the file were not made known to the petitioner. It is stated that the entire decision making process is faulty. Reliance has been placed in the judgment of the Supreme Court of India in the case of State of Uttaranchal & others Vs Karan Singh reported in 2008 (8) SCC page 236 on para 15,

"In an enquiry, the employer/department should take step first

to lead evidence against the workman/delinquent charged and given an opportunity to him to cross examine me the witnesses of the employer. Only thereafter, the workman/delinquent he asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.”

iii) It is stated that the above procedure as laid down by the Supreme Court of India has not been followed except the statement recorded from the petitioner and no witness was examined for the proof of the charges.

iv) It is further contended that, the punishment imposed on the petitioner is excessive, exorbitant and disproportionate to the nature of the misconduct.

13. He further states that the order of Appellate Authority suffers complete lack of application of mind. The learned Senior counsel would contended that the order of impugned as if the petitioner did not gave her defense statement, she did not participated in the enquiry, she did not intimate the change of address, etc., He would state that, these were the findings of the original enquiry report which stand set aside by an order of this Court in WP.No.27797 dated 22.02.2006.

14. During the second enquiry, the petitioner participated the enquiry. He would submit that the order of Appellate

Authority must be set aside on the ground that there is complete lack of application of mind by the Appellate Authority. The learned counsel for the Government would supported the order of Appellate Authority and would state that the conduct of the petitioner is such that the order of removal from service does not suffer from any infirmity.

15. The petitioner did not report for duty from 16.11.1994. There is nothing on record to show that the petitioner's application for extension of time was accepted by the Government. Merely writing for extension of time without any permission does not amount to sanction of leave. The petitioner was therefore aware that, she had not been permitted to go on leave. In the absence of any material to show that the Government had sanctioned leave. The petitioner's absence has to be unauthorized. The material on record shows that, the charge memo was sent to the petitioner only on 21.03.1995 ie., 4 months and 5 days. Despite the charge memo, the petitioner did not choose to report back to duty. In fact, the petitioner went on changing address without permission. She has not joined duty even on being asked to do so. The charges therefore cannot be said to be vague, non-specific or ambiguous.

16. The reading of the Enquiry Officer's report would show that the Enquiry Officer has applied his mind on all the factual aspects of this case. The present case is one of unauthorized absence. It was for the petitioner to show that her leave has been sanctioned. In the absence of any material on record to show that the leave has been sanctioned, there is no necessity of producing witnesses by the respondents to show that the charges have been proved. The documentary evidence itself shows that the petitioner was on unauthorized leave. The petitioner also does not deny the fact that she did not return to the duty. She now stated that, first she was not well and later her mother-in-law fell ill. In view of these facts, the onus lies on petitioner to show that her leave had been accepted. Thus there is no need of any oral evidence in the facts of the present case. It is a matter of actual acceptance of guilt.

17. However, the Appellate Authority has while discussing with the appeal has observed as under:-

"2. On finalization of the disciplinary action, the Director of Medical Education in his proceedings second read above imposed the punishment of "removal from service" on Tmt.R.Anusuya. The order was served to her relative on 13.08.2003. Aggrieved by the above orders, Tmt.R.Anusuya has submitted her appeal to Government in the reference third read above.

3. Tmt.R.Anusuya, in her appeal has stated that the disciplinary authority while passing the order of "removal from service" had not taken into consideration the submission made by her in further representation for the inquiry officer's report. A mere denial of all the allegations in the further representation is not valid excuse. Hence on the face of the order of disciplinary authority, it suffers from serious infirmities and hence liable to be set aside. The disciplinary authority had not taken into consideration the meritorious service rendered by her all along before imposing a major penalty of removal from service wiping out the retirement benefits. The charges are not grave so as to warrant a major penalty. The disciplinary authority for similar delinquencies have imposed minor penalties and shown leniency on number of individuals. Hence the punishment not only is excessive but also discriminatory in nature. She has further requested to inquire the matter and set aside the punishment and reinstate her into service with all consequential service and monetary benefits in the interest of justice.

4. The appeal was entertained and the Tamil Nadu Public Service Commission was consulted under regulation 18(1)(a) of the Tamil Nadu Public Service Commission Regulations, 1954, for its views.

6. The Government examined the appeal preferred by Tmt.Anusuya carefully and independently with all the connected records along with the views of the Tamil Nadu Public Service Commission. The appellant has not submitted her defence statement to the charges framed against her. Further she has not participated in the enquiry conducted by the Inquiry office and also not intimated the change of address to the appointing authority. The appellant has not put forth any documentary evidence to support her appeal. The Government have therefore decided to reject the appeal preferred by Tmt.R.Anusuya against the punishment of "removal from service" imposed on her by the Director of Medical Education. The government, accordingly, do and hereby order that the appeal preferred by

Tmt.Anusuya, formerly Staff Nurse, Government General Hospital, Chennai against the punishment of "removal from service" impose on her by the Director of Medical Education in the proceedings second read above, be rejected as devoid of merits and confirm the punishment already imposed on her."

18. A perusal of the order of Appellate Authority definitely shows complete lack of application of mind. It seems that the Appellate Authority actually looked in the first enquiry report and not the present enquiry report dated 29.07.2006. During the first enquiry proceedings, the petitioner did not appear. This Court by an order in WP.No.27797 dated 22.02.2006, has set aside the enquiry report and remanded the matter for a fresh proceedings. The petitioner participated in the second enquiry proceeding. The order of the Appellate Authority therefore suffers complete lack of application of mind and cannot be sustained at all. The order of the Appellate Authority cannot be sustained at all as it suffers from total non-application of mind.

19. Mr.Venkataramani, Senior Counsel for the petitioner contended that, the petitioner has already attained superannuation and that instead of remanding the matter back to the Appellate Authority, the punishment can be suitably modified to one of compulsory retirement. This contention of the

learned senior counsel cannot be accepted.

20. This Court is inclined to set aside the order of the Appellate Authority. It is for the Appellate Authority to consider as to whether the punishment is disproportionate or not. This Court while setting aside the order of the Appellate Authority is not inclined to interfere with the punishment. In the result, the appeal is allowed. The impugned orders passed in Ref.No.26091/SCII/1/2006 dated 25.09.2006, is set aside and the matter is remand back to the Appellate Authority/1st respondent, The Dean, Government General Hospital, Chennai - 3.

21. Since the petitioner is 65 years of age, the Appellate Authority is directed to consider the appeal within a period of six weeks from the date of receipt of a copy of this order. The Appellate Authority is directed to consider the entire case of the petitioner uninfluenced by any observations made by this Court, while disposing of the instant writ petition. No Costs.

07.06.2019

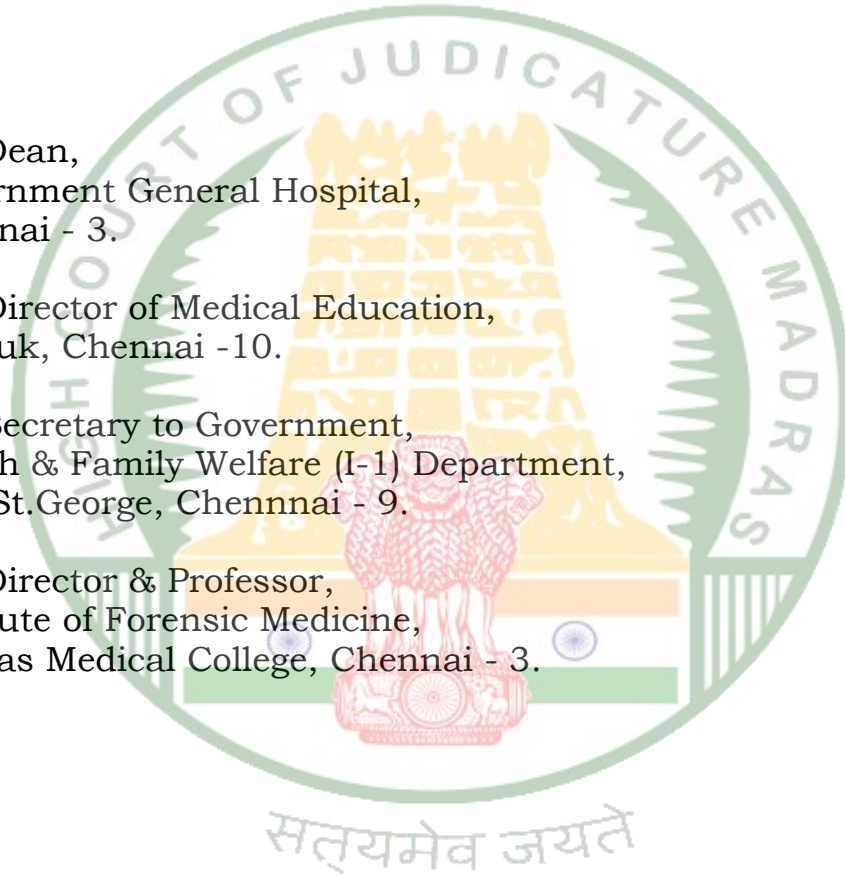
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SUBRAMONIUM PRASAD, J.

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To

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