

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 11.03.2019

Reserved on	Pronounced on
05.03.2019	11.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 6241 OF 2011

S.Sathyannarayanan

.. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. By its Secretary
Health & Family Welfare Dept.
Fort St. George, Chennai - 9.

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

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the 2nd respondent's proceedings made in ROC No.103380/SCII(s)2000 dated 27.07.2007 as confirmed by the 1st respondent vide G.O. (D) No.1064 dated 22.10.2010 to quash the same and consequently directing the respondents to extend all benefits both service and monetary including backwages, etc.

For Petitioner : Mr. L.Chandrakumar

For Respondents : Mr. J.Ramesh, AGP

ORDER

The petitioner, aggrieved by the proceedings of the 1st respondent, confirming the order of his removal from service, passed by the 2nd respondent, is before this Court filing the present petition.

2. The petitioner was originally appointed as Junior Assistant on 4.10.1972 in the Tamil Nadu Medical Ministerial Service and posted in the Government Hospital, Villupuram. The petitioner was, thereafter, promoted as Assistant on 18.4.1988 and in the year 1995, he was transferred to the Institute of Mental Health, Chennai and was working there. On 12.1.2001, the

petitioner was placed under suspension in contemplation of disciplinary proceedings under rule 17 (B) of the Tamil Nadu Civil Services (D & A) Rules and, thereafter, he was issued with a charge memorandum containing 8 articles of charges. The substance of the charges relate to misappropriation of money by the petitioner while he was working in the Institute of Mental Health to the tune of few lakhs.

3. Although the petitioner denied the charges, an enquiry was initiated and a report was submitted holding that the charges were proved. After obtaining explanation from the petitioner, the disciplinary authority, the 2nd respondent herein, by his proceedings dated 27.07.2007, imposed the penalty of removal from service. Aggrieved by the penalty imposed, the petitioner preferred a statutory appeal on 19.2.2008 before the 1st respondent. However, the appeal was not disposed of within a considerable time and, therefore, the petitioner approached this Court by filing W.P. No.19847/08 and this Court disposed of the writ petition on 14.08.2008 directing the 1st respondent to dispose of the appeal. Thereafter, the 1st respondent passed G.O. (D) No.1064 dated 22.10.2010 rejecting the appeal by confirming the order of the disciplinary authority. The orders passed by respondents 1 and 2 are put to challenge in this writ petition.

4. Mr.L.Chandrakumar, learned counsel appearing for the petitioner submitted that the enquiry has not been properly conducted as no proper opportunity has been afforded to the petitioner by following the due principles of natural justice. According to the learned counsel for the petitioner, several other officers, who were involved in the same incident had been let off without any punishment, but only the petitioner alone has been singled out for inflicting the extreme penalty of removal from service. Learned counsel for the petitioner attempted to point out several lacunae in the conduct of the enquiry proceedings and the order passed by the disciplinary authority as well as the appellate authority and submits that the enquiry proceedings, therefore, stood vitiated and, hence, the punishment has to be interfered with by this Court.

5. On the other hand, Mr.Ramesh, learned Addl. Government Pleader appearing for the respondents submit that the petitioner has been given sufficient opportunity to defend his case and the enquiry officer, after following the due principles of law, has submitted a finding against the petitioner. Since the charges were very serious in nature, the disciplinary authority had rightly taken a decision to remove the petitioner from service. The punishment ultimately imposed on the petitioner was proportionate to the misconduct committed by the petitioner. According to the learned Addl. Government Pleader, the very fact that the petitioner had voluntarily remitted the amount

misappropriated by him would amply prove his involvement in the misappropriation and, therefore, the petitioner cannot have any legitimate complaint against the conduct of enquiry against him or the so called violation of principles of natural justice. Learned Addl. Government Pleader submitted that when a person has not misappropriated any amount, he would not come forward to remit the amount. Such act on the part of the petitioner itself would amply prove his culpability in the misconduct.

6. Countering the above contentions, Mr.Chandrakumar, learned counsel for the petitioner submitted that the remittance of the amount towards misappropriation was not voluntary, but was dictated by the authorities as the petitioner was threatened that he would face criminal action if the amount was not remitted and only in this compelling circumstance, the petitioner had agreed to remit the amount. That by itself would not prove the factum of petitioner's involvement in the misappropriation. It is further submitted that any employee, in the position of the petitioner, would have done the same act in order to escape from criminal action being slapped on him and such act on the part of the petitioner is nothing but coercion and the same cannot be held against him.

7. Learned counsel for the petitioner further emphasised that the appellate authority, who passed the order, has not applied his mind by considering the various infirmities pointed out in the conduct of the enquiry as well as the order passed by the disciplinary authority, but was merely guided by the opinion tendered by the Tamil Nadu Public Service Commission, which opinion was also not furnished to the petitioner and that by itself vitiates the departmental proceedings initiated against the petitioner. In any event, the appellate authority is expected to pass a speaking order under the rules and the order passed by the 1st respondent, dated 22.10.10, does not conform to the rules and, therefore, it is submitted that the appellate authority's order is liable to be interfered with and the matter may be remitted to the 1st respondent for fresh consideration for passing a speaking order.

8. Although this Court not was convinced with regard to the various submissions made on behalf of the petitioner questioning the conduct of the enquiry and the proceedings and also the order passed by the disciplinary authority, nevertheless, the submission of the learned counsel for the petitioner in regard to the order passed by the appellate authority deserves serious consideration. The order of the 1st respondent as conveyed through G.O (D) No.1064, Health & Family Welfare Department, dated 22.10.10 did not address the points raised in the appeal filed on behalf of the petitioner and it appears that the 1st respondent was merely guided by the opinion tendered by the Public Service commission mechanically without taking an

independent view in the matter. The contention regarding non-furnishing of the opinion of the Public Service Commission has also not been disputed and once the appellate authority has chosen to rely on the advice of the Public Service Commission, a copy of the advice ought to have been furnished to the petitioner for him to make an effective representation against the said advice.

9. In any event, ultimately, the order passed by the 1st respondent in appeal did not conform to the legal principles laid down by the Courts as to how the appellate authority should exercise his power under the rules in disposing off appeals in disciplinary matters. Time and again the courts have held that the appellate authority cannot abdicate its statutory responsibility in favour of an outside agency like the Public Service Commission. The order in appeal must disclose independent application of mind in dealing with the points raised in the appeal by the delinquent officer. In this case, as rightly contended by the learned counsel for the petitioner, the order in appeal is non-speaking and does not disclose any application of mind at all. This is particularly so when the petitioner is inflicted with a major penalty of removal from service and this court is of the view that due and proper care should have been taken by the appellate authority in disposing of the said appeal.

10. In the said circumstances, this Court is constrained to interfere with the order passed by the 1st respondent on the limited ground that the appellate authority/1st respondent has not passed a reasoned order in terms of the disciplinary rules. Further, this Court is also of the considered view that the appellate authority has to furnish a copy of the advice given by the Public Service Commission to the petitioner.

11. For the reasons aforesaid, the impugned order passed by the 1st respondent in G.O. (D) No.1064, Health & Family Welfare Department, dated 22.10.2010 is set aside and the matter is remitted back to the 1st respondent for fresh consideration of the appeal preferred by the petitioner. The 1st respondent is directed to consider the appeal independently without being solely guided by the advice tendered by the Tamil Nadu Public Service Commission, on the merits of the appeal and to pass a reasoned order within a period of eight weeks from the date of receipt of a copy of this order. It is further directed that along with the order in appeal, the 1st respondent shall enclose a copy of the advice tendered by the Tamil Nadu Public Service Commission to the petitioner. It is also made clear that while passing order in appeal, the 1st respondent shall not be influenced by any observation of this Court in this order.

12. This writ petition is allowed to the extent indicated above. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary,
State of Tamil Nadu
rep. By its Secretary
Health & Family Welfare Dept.
Fort St. George, Chennai - 9.

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

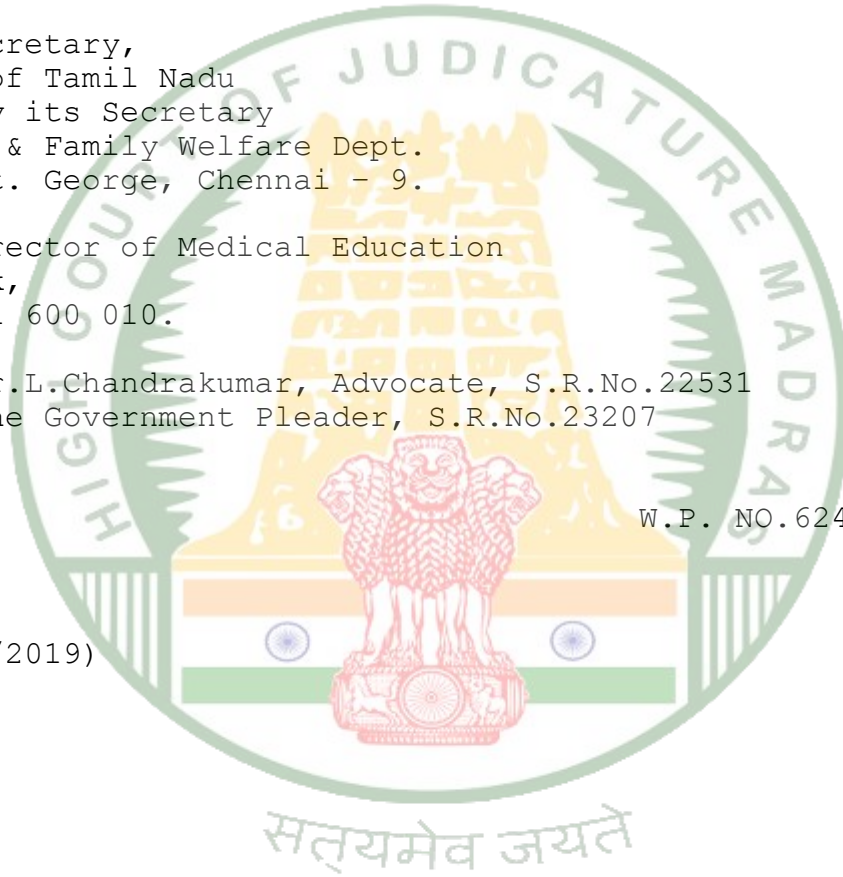
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.22531

+1cc to the Government Pleader, S.R.No.23207

W.P. NO.6241 OF 2011

RR (CO)

RRS (06/05/2019)



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