

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.10741 of 2018

and

WMP.Nos.12678 of 2018 and 4668 of 2019

Dr.R.Meera

W/o.P.Mathiyazhakan

... Petitioner

-Vs-

1. The Principle Secretary to Government,
Health and Family Welfare Department,
Government of Tamil nadu,
Fort. St.George, Chennai - 600 009.
2. The Director of Public Health and Preventive Medicine,
No.359, Anna Salai,
Teynampet,
Chennai - 600 006.
3. Dr.P.Vadivelan,
Inquiry Officer,
Additional Director of Public Health and Preventive Medicine,
Formerly Joint Director of Public Health and Preventive
Medicine,
O/o. The Director of Public Health and Preventive Medicine,
No.359, Anna Salai, Teynampet,
Chennai - 600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the final order dated 08.02.2018 vide G.O.(D) No.208 passed by the first respondent and quash the same as illegal, unwarranted and Non-Est in the eye of law and further direct the first respondent to include the petitioner's name in the promotion panel of the year 2014-15 vide G.O.(D).No.1137 dated 11.09.2015 to the post of Joint Director issued by the first respondent.

For petitioner : Mr. R.Sreedhar

For Respondents : Mr. A.N.Thambi Durai,
Special Government Pleader.

ORDER

The order of punishment of stoppage of increment for about three years with cumulative effect vide G.O.[D]No.208 Health and Family Welfare (D2) Department, dated 08.02.2018 is under challenge in the present writ petition.

2. The writ petitioner was initially appointed as Health officer in Tamil Nadu Public Health Subordinate Service during the year 1995 and subsequently she was promoted to the cadre of Deputy Director of Health Services. On account of certain allegations, a charge memo was issued against the writ petitioner in proceedings dated 15.09.2011 and the charges against the writ petitioner are extracted hereunder:

"Charge:

That Dr.Meera, while working as Deputy Director of Health Services, Udhagamandalam during the year 2007, as scheme implementing authority for the scheme Rogi Kalyan Samidhi (Patient Welfare Society) has violated the guidelines for the use of the funds allotted to Primary Health Centres under the said scheme and caused purchase of unapproved items like TV,DVD, UPS and VKT OP cards to the tune of 10.35 lakhs by way of getting false quotations and directly dealt with suppliers in violation of guidelines and purchased the products thereby committing criminal misconduct and misappropriation of Government money."

3. The writ petitioner has not submitted her defense statement. But, in her letter dated 27.09.2011, she requested certain records to defend her case during her tenure at Udhagamandalam in 2007. Many audits were conducted by the Competent Authorities and by the Accountant General in all respects especially regarding the financial transactions in National Rural Health Mission. The contention of the writ petitioner is that even during the audit objections, there was no such objections raised in respect of purchase of Television, DVD, UPS and VKT OP cards to the tune of Rs.10.35 lakhs. In the absence of any such objections from the audit authorities, the charge itself is liable to be scrapped.

4. Not accepting the explanation submitted by the writ petitioner, the Enquiry Officer was appointed to conduct an enquiry. The enquiries were conducted and the writ petitioner had also participated in the enquiry. After providing an opportunity to the writ petitioner, the Enquiry Officer submitted his report holding that "the charges framed against Dr.R.Meera while working as Deputy Director of Health Services,

Udhagamandalam during the year 2007, as Scheme implementing authority for the Scheme, Rogi Kalyan Samiti has violated the guidelines for the use of funds allotted to the Primary Health Centres under the said scheme and caused purchase of items like TV, DVD, UPS and VKT OP Cards to the tune of Rs.10.35 lakhs by way of getting false quotations and directly dealt with the suppliers in violation of guidelines and purchased the products, thereby committing criminal misconduct and misappropriation of Government money is "Proved".

5. Based on the findings of the Enquiry Officer, the Disciplinary Authority sent a second show-cause notice to the writ petitioner and to submit her further representation to the Delinquent Official on the findings of the Enquiry Officer. In response, the writ petitioner had submitted her representation in respect of the findings of the Enquiry Officer. All these materials available on record was considered by the first respondent Government and the final order was passed imposing the penalty of punishment of "Stoppage of increment for a period of three years with cumulative effect", challenging the said order of punishment the present writ petition has been filed.

6. The learned counsel for the writ petitioner states that the petitioner had followed the procedures contemplated under the scheme. There was no violation as such, stated in the impugned order. The writ petitioner had strictly followed the procedures and she had not involved in any misappropriation or otherwise. The writ petitioner having a clean records of service and possessed an outstanding performance. Thus, considering the past services rendered by the writ petitioner, the authorities ought to have exonerate her from the allegations, for which she is not responsible.

7. The learned counsel for the writ petitioner mainly relied on the ground that there was an enormous delay in concluding the departmental disciplinary proceedings and therefore, the order of punishment is liable to be scrapped on the ground of delay.

8. In this regard, it is contended that there is a delay of 189 days in calling for the explanation for framing charges under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Delay of 12 days in allowing the writ petitioner to peruse the documents and submit her explanations. The delay of 380 days in appointing the Enquiry Officer and the delay of 1351 days in concluding the Enquiry and the delay of 491 days in passing the final order. In view of the consistent delay, which is contrary to the guidelines issued by the Government, the impugned order of punishment is liable to be set aside.

9. This Court is of the considered opinion that the guidelines issued by the Government by way of a letter, is only directory and can never be construed as mandatory. Such guidelines issued to the Sub-ordinate Officials or for the purpose of concluding the departmental proceedings and the same would not confer any right on the delinquent employee's to claim exoneration from the charges on the ground of delay in disposal of the departmental proceedings. Of course, in certain exceptional circumstances, the long delay plays a vital role. However, in all other cases, the order of punishment cannot be quashed merely on the ground that there is a delay in concluding the departmental disciplinary proceedings. The delay occurs on account of various reasons, some times the disciplinary proceedings are prolonged and protracted at the instance of delinquents also and in certain other circumstances, certain administrative exigencies are also contribute for delay in concluding the departmental disciplinary proceedings. However, the Authorities Competent must ensure that on initiation of departmental proceedings, the same must be concluded within a reasonable period of time and without causing any undue delay. The delay in the present writ petition can never be considered as enormous and the impugned final order itself is passed by the Principal Secretary at the Government level. Thus, the procedures to be followed in the Government is little lengthy and such a delay cannot be vitiate the entire order of punishment.

10. The learned Special Government Pleader appearing on behalf of the respondents states that the inordinate delay stated in the affidavit, filed by the writ petitioner in respect of the enquiry is unsustainable. The Deputy Superintendent of Police, Vigilance and Anti-Corruption wing, Nilagiri District, Udhagamandalam Division had completed the investigations in a single day on 31.03.2010 by going to different locations where in the third respondent ought to have completed the enquiry on or before 11.11.2012 itself. But the inquiries were conducted on 02.09.2013, 10.06.2014, 11.06.2014, 26.11.2014, 22.07.2015 and even after the completion of the inquiry on 29.10.2015, the final report was not submitted by the Enquiry Officer on time.

11. The learned counsel states that the allegations against the writ petitioner are serious in nature without following the procedures contemplated. The writ petitioner purchased the TV, DVD, UPS and VKT OP cards to the tune of 10.35 lakhs directly from the distributors. It is stated that the writ petitioner is directly / indirectly involved in the purchase of products to be distributed to the Primary Health Centres under the administrative control of the petitioner since the witnesses viz: the Medical Officers of the Primary Health Centres have stated that the cheque which are intended to the suppliers have

been handed over to the Office of the Deputy Director of Health Services, Udhagamandalam / the Superintendent who is working under the administrative control of the petitioner and the superintendent would not have collected the cheques from the Medical Officers of the Primary Health Centres without the instructions of the petitioner to her office Superintendent. The cheques signed by the concerned Medical Officers which were intended to the suppliers of the purchase, should have been handed over by themselves to the suppliers of the purchase, should have been handed over by themselves to the supplier of the products and instead they have handed over the cheques signed by them to the Superintendent, Office of the Deputy Director of Health Services, Udhagamandalamw who is under the administrative control of the petitioner, by which it can be construed that without oral instructions from the petitioner the cheques would not have been handed over to the Superintendent, who is working under the administrative control of the petitioner. Therefore, the petitioner has handled this purchase of products and have settled the amount directly or indirectly.

12. In respect of the delay, it is stated that the delay in finalising the disciplinary case against the petitioner is purely due to administrative reasons viz: several witness have been inquired in this disciplinary case, and that the disciplinary case have been sent to various advisory departments of the Secretariat before finalising the disciplinary case against the petitioner.

13. Considering the facts and circumstances of the case, this Court is of the considered opinion that the arguments advanced by the learned counsel for the writ petitioner, with reference to the merits of the allegations can never be adjudicated at this point of time. Only in the event of any explicit findings of an Enquiry Officer or procedural violations in the mater of adherence of Discipline and Appeal Rules.

14. The judicial review can be exercised by the High Court. The findings of the Enquiry Officer in normal circumstances, can never be interfered with the High Court while adjudicating the validity of the punishment imposed on the delinquent official. Only on exceptional circumstances, wherein it is established that the findings are absolutely perverse, the Court would not interfere with the findings. The Government finding of the Enquiry Officer would be relied on normal circumstances. Thus, the arguments advanced in respect of the merits of the allegations can never be interfered with and the only ground raised by the writ petitioner is the delay. The order of punishment is issued on the Government level, since the writ petitioner was holding the post of Deputy Director of Health services on consolidation process in respect of State Level

Officer are little larger and the files are to be approved by the various other nodal department of the Secretary.

15. This being the procedures to be followed, the administrative delay caused would not be a ground for the exoneration of the writ petitioner from the order of punishment.

16. This being the factum, the writ petitioner has not established any acceptable legal ground for the purpose of quashing the order of punishment and the other grounds raised by the petitioner in relation to the merits are neither candid nor convincing.

17. Accordingly, the writ petition is stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mp/pns

To

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+1cc to Mr.R.Sreedhar, Advocate Sr.No.34879

+1cc to Government Pleader, Sr.No.35308

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rsk(co)

mp(20/05/2019)