

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.27472 & 27707 of 2019
and
W.M.P.Nos.26961 & 27234 of 2019

Dr.Rammohan

... Petitioner
in both W.Ps.

Vs.

1. The Secretary to Government,
Representing to the State of Tamil Nadu
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.1st respondent
in both W.Ps.
2. The Director of Public Health and Preventive Medicine,
Chennai - 600 009.2nd respondent
in W.P.No.27472/2019
3. Director of Medical and Rural Health Services,
Chennai - 600 006.2nd respondent
in W.P.27707/2019 and
...3rd respondent
in W.P.No.27472/2019
4. The Joint Director of Public Health
and Preventive Medicine,
Institute of Vector Control, Hozur,
Dharmapuri District.4th respondent
in W.P.No.27472/2019

W.P.No.27472 of 2019:-

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus,

(i) to call for the records relating to the charge memo No.87221/PHCIII/A1/05, dated 23.06.2006 superseded by the charge memo No.87221/PHC3/A1/05, dated 10.07.2007 of the second respondent on the direction of the first respondent in his letter No.44958/D1/2005-3, dated 05.07.2007 and quash the same.

(ii) Consequently quash the order of suspension issued in Proceedings R.No.87221/PHC.3/A-1/2005-1, dated 22.07.2005 of the

second respondent, order of continuing the petitioner in service issued in G.O.(D).No.893 H & F.W (D1) Department, dated 27.07.2007 of the first respondent and direct the respondent to accord all consequential monetary, service, pension and pensionary benefits both withheld and not sanctioned to the petitioner as applicable to normal retirement within a reasonable time.

W.P.No.27707 of 2019:Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent vide charge memo No.4574/SC2/3/2007 dated 03.03.2007 and quash the same and consequently direct the respondents to accord all consequently monetary, service, pension and pensionary benefits both withheld and sanctioned to the petitioner as applicable to normal retirement within a reasonable time.

(In both W.Ps.)

For Petitioner : Mr.Praveen Alexander

For Respondents : Mrs.A.Sri Jayanthi,
Additional Government Pleader.

COMMON ORDER

By consent, these writ petitions are taken up for final disposal at the admission stage itself.

2.The petitioner was appointed as Assistant Civil Surgeon in the Tamil Nadu Medical Service during the year 1982-1983 through TNPSC and was posted as Assistant Civil Surgeon G.P.H.C., Thuneri, Nilgiris and thereafter posted at different places. While the petitioner was working at Namakkal during 1988, in the DANIDA project, he underwent treatment at Adyar Cancer Institute for oral cancer. His probation was declared only on 03.05.1993. While the petitioner was working in Government Hospital, Manapparai, he was selected as departmental candidate for PG Dip. In Orthopedics and was deputed and joined Thanjavur Medical College and underwent the course during 1994-1995 and thereafter at Madurai Medical College. The petitioner discontinued the PG course and reported to the 3rd respondent on 25.06.1998, seeking for postings and thereafter, he was posted and joined duty in the Government Head Quarters Hospital Perambalur, on 28.03.1999. He submitted leave application from 10.02.1995 to 27.03.1999, including the waiting period from 26.06.1998 to 27.03.1999 for his posting. While so, the 3rd respondent initiated disciplinary proceedings for the petitioner's absence from duty from 10.02.1995 to 27.03.1999 and charges were framed in Memo

No.4574/SC2/3/2007 dated 03.03.2007. After enquiry, the enquiry officer held that the charge of unauthorized absence was proved. Thereafter, the petitioner was promoted as Civil Surgeon and joined duty on 28.03.1999. Subsequently, the petitioner was placed under suspension by the 2nd respondent with effect from 23.07.2005, vide proceedings R.No.87221/PHC.3/A1/2005 dated 22.07.2005 alleging that the petitioner indulged in sexual harassment with a staff nurse and female staff, and the enquiry on the above charge memo is still pending. Thereafter, the petitioner was issued with another charge memo vide R.No.87221/PHC.III/A1/2005 dated 23.06.2006 by including new charge on sexual harassment in charge memo R.no.87221/PAC III/A1/2005, dated 10.07.2007 of the second respondent under the instructions of the first respondent vide Government Letter No.44958/D1/2005-3, dated 05.07.2007. While petitioner attained the age of superannuation on 31.07.2007, the first respondent issued an order in G.O(D) No.893 H & F.W(D1) Department dated 27.07.2007 stating that the petitioner was retained in service u/r FR 56(1)(c) and the petitioner was not paid any subsistence allowance or any of his monetary benefits till date. Thereafter, the second respondent appointed the fourth respondent as enquiry officer and the petitioner also appeared for enquiry on 15.05.2019 and submitted his oral and written submissions with regard to the charges made against him. The main grievance of the petitioner is that though the charge memo was issued and disciplinary proceedings were initiated as early as in 2005, the petitioner was not permitted to retire from service after attaining superannuation on 31.07.2007, the disciplinary proceedings were kept pending and delayed by the respondents. Hence, the petitioner has filed the present petitions with the aforesaid prayers.

3.Heard both sides.

4.The learned counsel for the petitioner would submit that it would suffice, if a direction is issued to the first respondent to pass final orders on the charge memo No.87221/PHC.3/A1/2005 dated 23.06.2006 superseded by the charge memo No.87221/PHC.3/A1/05 dated 10.07.2007 of the second respondent and subsequent charge memo No.4574/SC2/3/2007 dated 03.03.2007 within a stipulated time as fixed by this Court.

5.The learned Additional Government Pleader would submit that the petitioner was issued charge memo due to unauthorized leave for a long period and also allegation of sexual harassment and certain other serious allegations, for which enquiry officer has been appointed and an enquiry was conducted. She conceded that the final orders will be passed within the time stipulated by this Court.

6.Thus, without going into the merits of the case, this Court is inclined to issue direction to the third respondent to complete the disciplinary proceedings on the charge memo in No.87221/PHC.3/A1/2005 dated 23.06.2006 superseded by the charge memo No.87221/PHC.3/A1/05 dated 10.07.2007 of the second respondent and subsequent charge memo No.4574/SC2/3/2007 dated 03.03.2007 and pass final orders within a period of eight weeks from the date of receipt of copy of this order. On perusal of the proceedings of the 2nd respondent dated 22.07.2005, it has been clearly mentioned that during the period of suspension, the petitioner would be paid subsistence allowance and dearness allowance as per rules. Therefore, the second respondent is directed to adhere to the rules and pay the subsistence allowance and dearness allowance to the petitioner during the period of his suspension.

7.With the above directions, these writ petitions are disposed of. No costs. Connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Representing to the State of Tamil Nadu
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.
2. The Director of Public Health and Preventive Medicine,
Chennai - 600 009.
3. Director of Medical and Rural Health Services,
Chennai - 600 006.
4. The Joint Director of Public Health and Preventive Medicine,
Institute of Vector Control, Hozur,
Dharmapuri District.

+2cc to Mr.D.Daniel, Advocate, S.R.No.79917, 79916

W.P.Nos.27472 & 27707 of 2019

BP(CO)
CS/03/10/2019