



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD).No.15460 of 2013

WEB COPY

Dr.M.Amalraj

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, St. George Fort, Chennai - 600 009.
 - 2.The Director,
O/o. the Director of Public Health and Preventive Medicine,
Chennai.
 - 3.The Commissioner,
Kodaikanal Municipality,
Kodaikanal, Dindigul District.
- .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in his proceedings in G.O.(D) No.329, Health and Family Welfare (D-1) Department, dated 16.03.2009 and the consequential government order issued by the first respondent in his proceedings in G.O.(D) No.563, Health and Family Welfare (L2) Department, dated 31.05.2013 and quash the same as illegal and consequently to direct the respondents to consider the petitioner for promotion notionally to the post of Deputy Director of Health Services with effect from the date on which his junior was promoted with all other attendant benefits.

For Petitioner : Mr.H.Mohammed Imran
For Respondents : Mr.M.Jeyakumar
1 and 2 Additional Government Pleader
For Respondent 3 : Mr.J.Parekh Kumar

O R D E R

This Writ Petition is for issuing a Writ of Certiorarified Mandamus to quash the impugned proceedings of the first respondent in G.O.(D) No.329, Health and Family Welfare (D-1) Department, dated 16.03.2009 and the consequential order passed by the first respondent in his proceedings in G.O.(D) No.563, Health and Family Welfare (L2) Department, dated 31.05.2013 and to consider the



petitioner's promotion to the post of Deputy Director of Health Services with effect from the date on which his junior was promoted.

2.The brief facts that are necessary for the disposal of the Writ Petition are as follows:

2.1.The petitioner was appointed as Filaria Officer (in the cadre of Health Officer) in the department of Health and Family Welfare in the year 1995. The petitioner was in charge of the recruitment to the post of Field Workers (Mazdoors) and that in the process, certain irregularities were observed by the second respondent. In relation to the irregularities, the second respondent issued a charge memo dated 12.02.1999 to the petitioner. The charges are as follows:

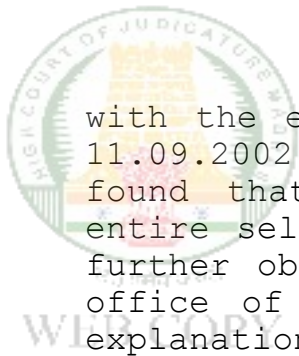
"Charge.I

"that he (Dr.Amalraj, while working as Filaria Officer, National Filaria Control Unit, Nagercoil) has committed certain irregularities in the appointment of Field Workers (Mazdoors) and has violated various Government Orders and rules relating to the procedures to be adopted while making appointments."

Charge.II

"that he (Dr.M.Amalraj, while working as Filaria Officer, National Filaria Control Unit, Nagercoil) has failed to include requirement of candidates for the category of "Women" and "Physically Handicapped" in the requisition form R.No.1026/A1/95 dated 13/8/97 of the Filaria Officer, National Filaria Control Unit, Nagercoil sent to the Employment Exchange, Nagercoil in violation of G.O.Ms.No.983, P & AR (Personnel.P) Department, dated 7/10/86 and G.O.Ms.No.89 P & AR (Personnel.S) Department dated 17/2/89 and has also failed to consider physically handicapped persons for selection of Field Workers (Mazdoors) in spite of the fact that the District Employment Officer himself has stressed the importance of it as per his D.O. letters X2/183/97 and X2/184/97 dated 2/9/97."

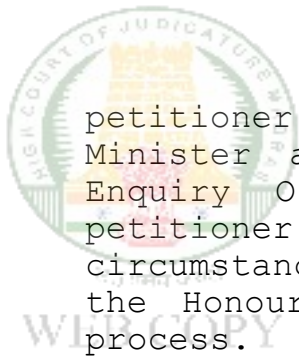
2.2.The petitioner submitted his explanation refuting the allegations. Later, an Enquiry Officer was appointed. It is stated by the petitioner that the petitioner produced various materials and evidence to show how he was pressurised by the Personal Assistant to the Honourable Minister and the Director of Public Health and Preventive Medicine. Even during the enquiry, he wanted to record that he was under tremendous pressure and the irregularities, even if any, were due to the intervention of his higher officials and the people, who are in the helm of affairs capable of commanding the Government establishment. Though the Enquiry Officer submitted a report holding that both the charges were not proved, the first respondent, the disciplinary authority was not satisfied



with the enquiry report. The first respondent issued a notice on 11.09.2002 deviating from the findings of the Enquiry Officer as he found that the petitioner by several manipulations reduced the entire selection process into a farce. The disciplinary authority further observed that communal rotation register is missing in the office of the Filaria Officer giving room for suspicion and the explanation cannot be accepted as proof for having followed the communal rotation. It was also found by the second respondent that the petitioner has failed to record the reasons for the unsuitability of several candidates who were not selected. It is in the background, in response to the notice issued by the disciplinary authority, the petitioner submitted his further explanation on 22.03.2003. Pursuant to the explanation, of course, no action was taken to conclude the departmental proceedings within a short time. The petitioner was allowed to retire from service without prejudice to pending departmental proceedings vide G.O.(D) No.626, dated 27.05.2008.

2.3. Thereafter, the first respondent issued a show cause notice dated 23.12.2008 informing the petitioner that the first charge is proved and called upon the petitioner as to why the punishment of pension cut for a period of one year should not be imposed upon the petitioner. It is relevant to point out that to this show cause notice, the petitioner has accepted the punishment. However, in the communication, in response to the show cause notice, the petitioner also stated that in order to avoid delay and in view of the financial crisis in the family of the petitioner, he was compelled to accept the punishment. It was thereafter by the impugned order dated 16.03.2003 vide G.O.(D) No.329, the punishment was imposed against the petitioner that there would be pension cut of Rs.1,000/- per month for a period of two years. Later, a representation was submitted by the petitioner to the first respondent regarding regularisation of the period during which he was suspended in the course of disciplinary proceedings. By the further order dated 31.05.2013, the first respondent stated that the period of suspension between 22.12.1997 and 31.05.1999 will be treated as leave period to which he is eligible other than unearned leave on medical certificate. The first respondent also regularised the period between 05.08.1999 and 10.08.1999 as a period available to the petitioner as a joining time and the period from 01.06.1999 to 04.08.1999 as period of compulsory wait by referring to the fundamental rules applicable. The above Writ Petition has been filed challenging the impugned order passed by the first respondent dated 16.03.2009 and the consequential order dated 31.05.2013.

3. The learned Counsel appearing for the petitioner relied upon the explanation offered by the petitioner to the charges and the findings of the Enquiry Officer. It is admitted that the petitioner was relieved from the second charge and the first respondent has found that the first charge alone is proved. Though the Enquiry Officer has not yet discussed the materials produced by the



petitioner suggesting that the Personal Assistants to the Honourable Minister and the Director of Public Health contacted him, the Enquiry Officer himself has found that the decision of the petitioner in the selection process is not independent. In such circumstances, the petitioner cannot blame his higher officials and the Honourable Minister for the irregularities in the selection process. Once the petitioner admits that there were few irregularities in the selection process, the first charge against the petitioner stands proved even as per the facts admitted and borne out from the records. Even in the explanation offered to the second show cause notice before passing the impugned order of the punishment, the petitioner has accepted the punishment.

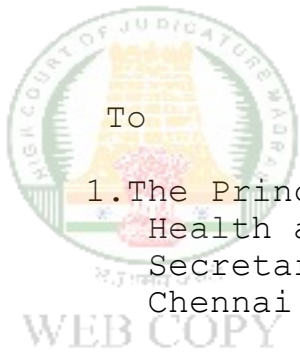
4.No doubt it is true that the petitioner in his explanation has pointed out that his acceptance of punishment was on account of the inconvenience and mental agony he suffered because of the long delay in completing the disciplinary action. However, it cannot be inferred from his explanation that the acceptance of punishment by his communication dated 22.03.2009 is not voluntary and the petitioner can escape from the consequences by citing external force or influence or any other extraneous compelling reasons he had for taking a decision to accept the punishment. The Enquiry Officer though found that the charges are not proved against the petitioner, the disciplinary authority had given reasons to vary from the findings of the Enquiry Officer and to find the petitioner guilty of Charge No.1. The irregularity in the whole selection process is admitted as seen from the records. The long delay in finalising the process of selection, the reasons for rejecting the candidatures of several persons would clearly prove that the petitioner was responsible for the irregularity in the selection process. No amount of interference would save him from the allegations as he is responsible for the affairs and maintaining transparency in the selection process. With regard to the consequential order regularising the period of suspension, the learned Counsel for the petitioner has not advanced any argument with reference to the fundamental rules and the challenge to the order also is by assuming that the order of punishment is illegal. Since this Court has concluded that the order of punishment is not illegal and the petitioner himself has accepted the punishment in his explanation, there is no scope for any illegality in the consequential order regularising the period of petitioner's suspension in the manner as seen from the impugned order.

5.As a result, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

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To

- 1.The Principal Secretary,
Health and Family Welfare Department,
Secretariat, St. George Fort,
Chennai - 600 009.
- 2.The Director,
O/o. the Director of Public Health and Preventive Medicine,
Chennai.
- 3.The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-86096[F] dated 10/09/2019)

+1 CC to M/s.GP (SR-86144[F] dated 10/09/2019)

+1 CC to M/s.P.SRINIVAS, Advocate (SR-86414[F] dated 12/09/2019)

ORDER MADE IN
W.P. (MD) .No.15460 of 2013
09.09.2019

SRM
MS/26.09.2019/5P.7C