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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

WP(MD)No.11 of 2016 and
WMP(MD).No. 4 of 2016

K.Vasanthi

... Petitioner

Vs.

1. The Secretary to Government,
Health and Family Welfare (K1) Department,
Fort St. George, Chennai - 600 009.

2.The Director of Medical and
Rural Health Services,
Chennai - 6.

3.The Joint Director of Medical and
Rural Health Services,
Karur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the Government Order in G.O(D).No595, dated 12.05.2015 of the 1st respondent herein and the Government Order in G.O.(D) No.1336, dated 24.12.2009 of the first respondent herein and quash the same and consequently, direct the respondents herein to repay the recovered stoppage of increment amount for the period of one year with cumulative effect to the petitioner by extending the benefits given to Dr.R.Shanmuganathan under G.O(D).No.463 dated 18.05.2010 of the 1st respondent herein to the petitioner also.

For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mr.S.Angappan
Government Advocate

ORDER

This Writ Petition has been filed to quash the orders passed by the first respondent in G.O(D).No.1336 dated 24.12.2009 and G.O.(D) No.595 dated 12.05.2015 and consequently, direct the respondents to repay the recovered stoppage of increment amount for the period of one year with cumulative effect to the petitioner by extending the benefits given to Dr.R.Shanmuganathan under G.O(D).No.463, dated 18.05.2010 passed by the 1st respondent herein.

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2.The brief facts of the case are that while the petitioner was working as Staff Nurse in the Karur Government Head Quarters



Hospital, Karur, she was issued with a charge memo dated 09.10.2000 stating that the petitioner and four others neglected to register the details of one patient viz., Kishore Praveen, who was referred from the Government Hospital, Pallapatti, Karur District; no written records were available at the Government Head Quarters Hospital, Karur to show the arrival of the patient; and no post mortem was done. She sent her detailed explanation denying the charges framed against her. Thereafter, enquiry was conducted and the enquiry officer submitted the enquiry report holding that the charges framed against the petitioner and others have been proved. Subsequently, the first respondent served the enquiry report and called for explanation from the delinquents. Pursuant to the same, the petitioner submitted her explanation. Being not satisfied with the same, the first respondent vide G.O.(D) No.1336 dated 24.12.2009, imposed a punishment of stoppage of increment for a period of one year with cumulative effect. Challenging the same, the petitioner filed a review petition before the first respondent on 17.08.2011. On receipt of the same, the first respondent sought clarification from the TNPSC and thereafter, issued a notice to the petitioner to show cause, as to why the punishment of stoppage of increment for a period of one year may be enhanced, to which the petitioner submitted her detailed explanation. However, the first respondent vide G.O.(D)No.595 dated 12.05.2015, enhanced the punishment of stoppage of increment for a period of three years with cumulative effect. Aggrieved over the same, the petitioner has come up with the present writ petition for the above stated relief.

3.Upon notice, the respondents filed a detailed counter affidavit, wherein, at paragraph nos.14 and 15, it has been averred as follows:

"14....it is submitted that as stated in the previous para, same set of charges were not framed against all the 5 persons and even in the same set of charges framed against Dr.Shanmuganathan and the petitioner herein, the final orders were issued based on the merits of the case, after careful consideration with all connected records. The gravity of the lapse committed by each was thoroughly examined and the punishment imposed on the petitioner herein commensurates with the gravity of the charges against her. Dr.Shanmuganathan had come from the operation theatre while attending another patient and had examined the patient and instructed the petitioner herein to arrange for O.P ticket before returning to the operation theatre but she had not cared to do it stating that it is not her duty. She should have arranged immediately for providing O.P ticket and should have approached the duty doctor for further instructions and should have entered the details of the patient in the relevant registers like Nurses Report Book, Referral in Register, etc. but failed to do so and meanwhile the relatives had taken



away the patient.

15....it is submitted that for the reasons stated above, the impugned order of the first respondent herein is not arbitrary and it is legal, warranted and sustainable in law."

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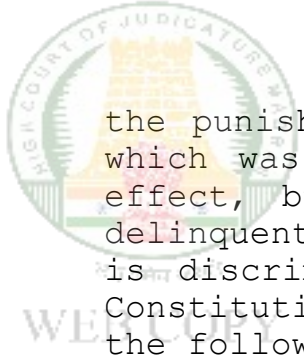
4.The learned counsel appearing for the petitioner submitted that though the petitioner and four others were issued with a charge memo containing the same charges and the charges were held proved vide enquiry report dated 04.01.2007, the first respondent imposed a punishment of stoppage of increment for a period of one year with cumulative effect in respect of the petitioner alone, vide G.O.(D) No.1336 dated 24.12.2009, but dropped all further actions in respect of a co-delinquent, Dr.R.Shanmuganathan, vide G.O (D) No.463 dated 18.05.2010. As the petitioner is a similarly placed person, the action of the first respondent in issuing the impugned Government Orders imposing punishment and enhancing the same subsequently in respect of the petitioner alone, is discriminatory, arbitrary, whimsical and capricious and hence, the same is liable to be set aside. In support of his contention, the learned counsel relied on the decisions of the Supreme Court in (i) (1997) 10 SCC 779 (M.Raghavelu v. Govt.of A.P and another) and (ii) (2013) 3 SCC 73 (Rajendra Yadav v. State of Madhya Pradesh and others) and (iii) the order of this Court in N.Nandagopalan v. the Secretary to Government reported in 2007 Writ LR. 52. Hence, the learned counsel prayed for allowing this writ petition by setting aside the orders impugned herein.

5.Reiterating the averments made in the counter affidavit, the learned Government Advocate appearing for the respondents submitted that considering the gravity of charges proved against the petitioner, the punishment imposed on the petitioner is just and reasonable and the same warrants no interference by this Court. Thus, the learned Government Advocate sought to dismiss this writ petition.

6.Heard both sides and perused the records.

7.Admittedly, the petitioner and four others were involved in the same incident and the charges framed against them were one and the same. However, the first respondent imposed the punishment of stoppage of increment for a period of one year with cumulative effect, which was subsequently, enhanced to three years, in respect of the petitioner alone, whereas all further actions were dropped by the first respondent in respect of the co-delinquent Dr.R.Shanmuganathan vide G.O(D) No.463 dated 18.05.2010.

8.According to the petitioner, when similar charges were framed against all the delinquents and the same were held proved, the disciplinary authority ought to have awarded the same punishment in respect of all, whereas the first respondent adopted different yardstick in respect of the petitioner alone by imposing



the punishment of stoppage of increment for a period of one year, which was subsequently, enhanced to three years, with cumulative effect, but dropped all further actions, in respect of the co-delinquent Dr.R.Shanmuganthan. Such action of the first respondent is discriminatory in nature and violative of Article 14 of the Constitution of India. To substantiate his contentions, he cited the following decisions of the Supreme Court as well as this Court.

(i) In M.Raghavelu case (cited supra), it was observed by the Supreme Court as under:

"5. The argument of the learned counsel for the appellant is that if the persons directly in charge of the construction work were found not guilty of the charge framed, the appellant, who was indirectly in charge of the work, cannot be punished for similar charge levelled against him. We find force in the argument of the learned counsel for the appellant and we do not think that the argument of the learned counsel for the respondent that the enquiry officer in this particular case, has gone into the merits and has given different finding, should be accepted. As pointed out earlier, on the basis of the same set of evidence, the officers who were directly in charge of the construction work were exonerated of the charge and we see no reason to pick out the appellant alone for finding him guilty of the charge."

(ii) In Rajendra Yadav case (cited supra), at paragraphs 9 to 12, it was held by the Supreme Court as follows:

"9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences."

10. The principle stated above is seen applied in few judgments of this Court. The earliest one is Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The disciplinary authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and



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that of compulsory retirement on the Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In *Anand Regional Coop. Oil Seedsgrowers' Union Limited v. Shailesh Kumar Harshadbhai Shah* (2006) 6 SCC 548, the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view that the principle laid down in the above mentioned judgments would also apply to the facts of the present case. We have already indicated that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. The appellant is, therefore, to be reinstated from the date on which Arjun Pathak was reinstated and be given all consequential benefits as were given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs."

(iii) This Court in *N. Nandagopalan v. The Secretary to Government* reported in 2007 Writ L.R.52, held as under:

"9. It is well settled in law that if employees are involved in the same incident, the Department should proceed against all or should not proceed against none. There is no discretion to proceed against some of employees and no action against the other employees, since they are identically placed and their involvement being identical. In the instruction submitted by the Government Advocate, it is not stated as to how the petitioner's involvement is not similar to other 28 persons. In the absence of such distinct feature, the proceedings conducted by the respondent against the petitioner and



imposing punishment on the basis of the charge is illegal and hence the impugned order is set aside."

9. The submissions so made by the learned counsel for the petitioner are refuted by the learned Government Advocate appearing for the respondents. According to him, based on the gravity of the charges held against the petitioner, the first respondent imposed the punishment of stoppage of increment for a period of one year, which was subsequently, enhanced to three years with cumulative effect, as per the clarification issued by the TNPSC and hence, the same are perfectly valid in law, warranting no interference by this Court.

10. Upon considering the rival submissions and with due regard to the above cited decisions, it appears that the doctrine of equality must apply to all those who are equally placed, even who are found guilty for similar charges. The equality of treatment would also be maintained, while imposing punishment and there cannot be discrimination as the same would violate Article 14 of the Constitution of India. Applying the said principle in the instant case, wherein, when all further actions were dropped in respect of the co-delinquent Dr.R.Shanmuganathan, the order of punishment of stoppage of increment for a period of one year, which was subsequently, enhanced to three years, with cumulative effect, passed against the petitioner alone is discriminatory being violative of Article 14 of the Constitution of India. On the other hand, the doctrine of equality must be applied in the present case.

11. From the foregoing discussions, it is clear that the punishment awarded to the petitioner is not in consonance with the principles of law vis-a-vis the charges proved against him and hence, the orders impugned herein are liable to be quashed and accordingly, quashed and the matter is remitted to the first respondent for passing orders afresh, in accordance with law, taking note of the benefits given to the co-delinquent, Dr.R.Shanmuganathan vide G.O.(D) No.463, dated 18.05.2010.

12. This Writ Petition stands allowed in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

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To

1. The Secretary to Government,
Health and Family Welfare (K1) Department,
Fort St. George, Chennai - 600 009.

2. The Director of Medical and Rural Health Services,
Chennai - 6.

3. The Joint Director of Medical and Rural Health Services,
Karur.

+1CC TO MR.T.PON RAMKUMAR, Advocate Sr. No.60235

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10.04.2019

DB(CO)

TR (28.05.2019) 7P 5C