



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) Nos.19791 and 9256 of 2019

and

W.M.P(MD).Nos.16270 to 16272 and 7274 of 2019

WEB COPY

M.Jeyaraj ... Petitioner in both petitions

-Vs-

1.The State of Tamil Nadu

Represented by its Secretary
Department of Public
Fort.St.George
Chennai 600 009

2.The State of Tamil Nadu

Represented by its Secretary
Department of Health & Family Welfare
Fort.St.George
Chennai 600 009

3.The Director of Medical Education

Kilpauk
Chennai 10

...Respondents 1 to 3 in both petitions

4.The Principal Accounts General (Tamil Nadu)

No.361, Anna Salai
Thenampet, Chennai 600 018

5.The Pay and Accounts Officer

Office of the District Treasury
Madurai -20

... Respondents 4 & 5 in W.P.No.19791 of 2019

6.The Dean

Government Rajaji Hospital
Madurai -20

...Respondents 6 & 4 in both Writ petitions

PRAYER in W.P(MD).No.19791 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned G.O(D).No.1075, dated 28.06.2019 by the second respondent, the Secretary, Department of Health & Family Welfare, Tamil Nadu by withholding the terminal benefits issued against the petitioner and quash the same as illegal, arbitrary without any authority, without



jurisdiction and consequently, directs the second respondent to pay all the terminal benefits (gratuity, provident fund and leave encashment) along with interest at the rate of 24% per annum from the date of retirement.

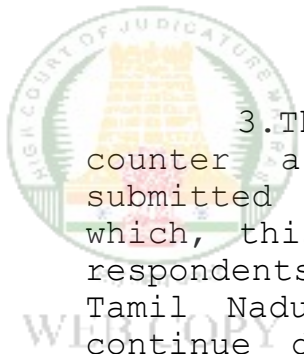
PRAYER in W.P(MD).No.9256 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned Charge memo issued by the 3rd respondent, the Director of Medical Education in Ref.No.61839/SCI/3/2017, dated 20.03.2018 (received on 15.04.2018) and quash the same.

For Petitioner	: Mr.R.Santhanam (In both petitions)
For R1 to R3 & R4 in W.P.No.9256 of 2019	: Mr.C.Ramar (In both petitions) Additional Government Pleader
For R4 in W.P.No.19791 of 2019	: Mr.P.Gunasekaran

COMMON ORDER

These Writ petitions have been filed challenging the orders passed by the second respondent, dated 28.06.2019 and the third respondent, dated 20.03.2018.

2.The petitioner while working as a Causality Medical Officer in the Government Rajaji Hospital, Madurai, on 22.02.2012, one convict prisoner was brought to the Hospital for treatment. It was informed that the said convict prisoner fell down in the bathroom. The petitioner examined the said prisoner and gave treatment to him. As per petitioner's instruction, the convict prisoner was admitted as an in-patient. After 36 hours of treatment, the said prisoner died on 24.02.2012. Hence, a charge memo was issued to the petitioner and others alleging negligence. Due to that, the petitioner filed W.P.(MD).No.9256 of 2019, challenging the said charge memo. This Court by an order dated, 16.04.2019, granted interim stay of the impugned charge memo issued by the third respondent, dated 20.03.2018. The respondents permitted the petitioner to retire from service on 30.06.2019 on attaining the age of superannuation and informed that if any dues to be paid to the Government is found at a later date, it will be recovered from his DCRG/other retirement benefits in one lumpsum. In this circumstance, the second respondent issued a Government Order in G.O.Ms.No.1075, dated 28.06.2019, informed that the disciplinary proceedings pending against the petitioner shall be continued under Rule 9 of the Tamil Nadu Pension Rules, 1978, in accordance with the procedure laid down in the said Rules and on that basis, the respondents have withhold the retirement benefits of the petitioner. Challenging the said G.O., the petitioner filed W.P(MD).No.19791 of 2019.



3.The learned counsel for the respondents 1 to 3 has filed counter affidavit. The learned Additional Government Pleader submitted that the petitioner filed W.P(MD).No.9256 of 2019, in which, this Court granted interim stay. In view of the same, the respondents are unable to proceed further. As per Rule 9 of the Tamil Nadu Pension Rules, 1978, the respondents have power to continue disciplinary proceedings even after retirement of the Government Servant and hence, he prayed for dismissal of these Writ Petitions.

4.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the official respondents and the learned counsel appearing for the fourth respondent in W.P.(MD).No.19791 of 2019.

5.From the materials on record, it is seen that the petitioner and others were issued the charge memo, alleging negligence on the part of the petitioner and others while giving treatment to the convict prisoner. Due to the stay granted by this Court, the respondents are unable to proceed further in the disciplinary proceedings. Now, the petitioner was informed by the respondents that the disciplinary proceedings will be proceeded as per Rule 9 of the Tamil Nadu Pension Rules, 1978. Pending W.P(MD).No.9256 of 2019, the respondents are not able to conclude the disciplinary proceedings.

6.Considering the above facts and circumstances of the case, without deciding the issue in both the Writ petitions on merits, these Writ petitions are disposed of with a direction to the respondents to complete the domestic enquiry and pass orders on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. The petitioner is directed to participate in the domestic enquiry. It is open to the petitioner to raise all the objections and submit his explanation with regard to the charge memo during the domestic enquiry. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

msa



To

1.The Secretary
State of Tamil Nadu
Department of Public
Fort.St.George
Chennai 600 009

2.The Secretary
State of Tamil Nadu
Department of Health & Family Welfare
Fort.St.George
Chennai 600 009

3.The Director of Medical Education
Kilpauk
Chennai 10

+1 CC to Mr.P.GUNASEKARAN, Advocate (SR-94574[F] dated 25/10/2019)

+1 CC to SPL GP (SR-94663[F] dated 25/10/2019)

+1cc to Mr.P.Gunasekaran, Advocate Sr.No.94574

W.P. (MD) Nos.19791 and 9256 of 2019
and
W.M.P (MD) .Nos.16270 to 16272 and 7274 of 2019
23.10.2019

VB(18.11.2019) 4P 7C